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ABSTRACT

This material includes student guide sheets, reference material, and tape script for the audio-tutorial unit on State and Federal Implementation. An audio tape is used with the materials. The material is designed for use with Connecticut schools, but can be adapted to other localities. This unit is designed to help answer the question of what kind of land use planning we should have as well as who should make the decisions. Activities focus on land use programs in selected states, federal programs that relate to land use, and components of land use strategy. (RH)

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STATE AND FEDERAL IMPLEMENTATION

SE 021 879

STATE AND FEDERAL IMPLEMENTATION

GUIDE SHEET #1

"... There is no question about whether or not we will have land use planning. The question is: What kind, and who will make the decisions. We already have land use planning of an ad hoc, accidental sort that, while it has made some people rich, has made most of us far poorer in terms of the kinds of choices we have and the quality of life we are offered ..."

Russell Train
EPA Administrator
November 26, 1974

OBJECTIVES

The unit on State and Federal Implementation is designed to help you answer the question of what kind of land use planning we should have as well as who should make the decisions. More specifically, at the conclusion of the unit on implementation, you should be able to:

1. Recognize and cite evidence for the past shortcomings at planning.
2. Describe the legal and financial methods available for land use planning and regulation.
3. Recognize the legislative issues that are involved in preparing a land management program.
4. Identify the prerequisites for a successful state land program.
5. Describe the important components of land use strategy.
6. Compare and contrast innovative state land use programs in Florida, California, Hawaii, Vermont, and Connecticut.
7. Gather data on the priority land use issues in your state, preferred method for regulating land use, preferred level of government to develop and enforce regulations and attitudes toward the present level of land use regulation.
8. Identify and describe the major federal programs that affect land use such as the HUD "701" program, The Coastal Zone Management program, NEPA, Clean Air Act, Water Pollution Act, National Flood Insurance and Historic Preservation.

Before beginning the unit on State and Federal Implementation, assemble the following:

cassette tapes - State Implementation 1 and 2.
Federal Implementation.
guide sheets - State and Federal Implementation.
Citizens guide to information on Land Use Decision Making.
pamphlets - Any information you can find on your state land use law.
DEP Citizen's Bulletin Use of Land I and II.
Finding your way through the EPA.

Place the tape in the casette recorder. Now proceed with the unit.

BE A RECYCLER YOURSELF. WRITE YOUR COMMENTS, NOTES, AND ANSWERS ON SCRAP PAPER INSTEAD OF THESE GUIDE SHEETS. IN THIS WAY, THESE GUIDE SHEETS WILL BE AVAILABLE FOR THE NEXT PERSON IN YOUR COMMUNITY WHO WILL BE AMKING USE OF THIS UNIT.

Written and Edited by: Larry Schaefer
Produced by: E-P Education Services

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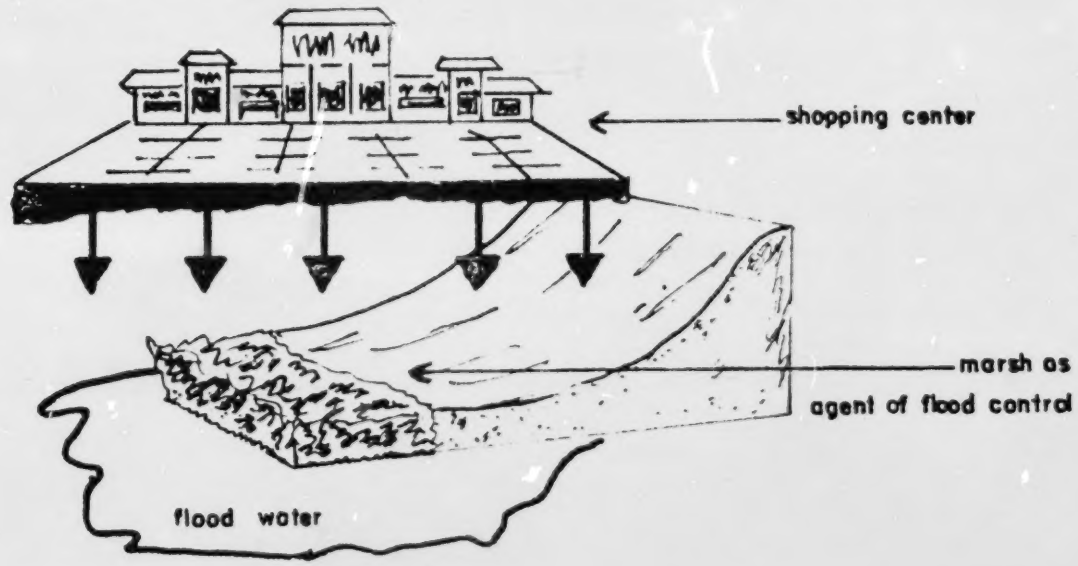
GUIDE SHEET #2

A. BASIC FACTORS SHAPING OUR LAND USE ATTITUDES

PIONEER ETHIC - Nature was seen as something to be challenged and conquered.

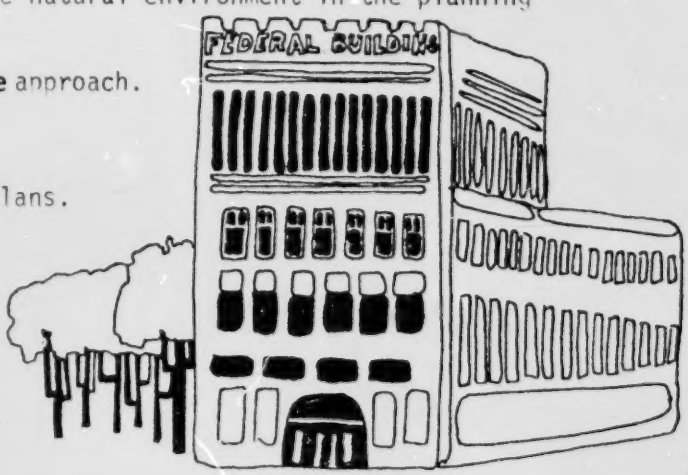
THE MYTH OF SUPERABUNDANCE, Land and natural resources were seen as being limitless.

THE LOCKEAN PRINCIPLE OF LAND OWNERSHIP, Man had the right to do what he wanted with his own land.



B. REASONS FOR PAST SHORTCOMINGS AT PLANNING

1. Inadequate consideration of the natural environment in the planning process.
2. Failure to take a comprehensive approach.
3. Single purpose planning.
4. Inadequate implementation of plans.



SOURCE: "Land use and Environmental Protection" U.S. Environmental Protection Agency, Youth Advisory Board, Washington, D.C. 20460.

GUIDE SHEET #3

Problems Arising From Ignoring Environmental Factors

- Untreated sewage being discharged into receiving waters during periods of heavy rainfall because of combined sewers.
- Property loss from development on flood plains.
- Siltation of reservoirs from poor soil managament practices.
- Pollution and depletion of groundwater supplies from development on aquifers and their recharge zones.
- Increase in frequency and severity of floods from extensive development in watershed areas, clear-cutting practices and channelization programs.
- Destruction of wetlands by the disposal of solid wastes in land fills.
- Loss of agricultural land to urban sprawl.
- Air pollution resulting from poorly designed urban transportation systems.
- Property damage from building in active geologic zones.
- Destruction of the natural environment by recreational developments.

Source: "Land Use and Environmental Protection"
U.S. Environmental Protection Agency
Youth Advisory Board
Washington, D.C. 20460

5

After you have finished reviewing this guide sheet turn the recorder on!

TABLE A

Problems Arising from Single-Purpose Planning

Single Purpose of Plan	Resulting Problems
Highway Transportation	*Primary** • Air pollution • Noise pollution • Congestion *Secondary*** • Induced growth, urban sprawl, strip development, leap-frogging • Restriction of transportation alternatives • Socio-cultural impacts • Relocation of people
Water Resource Management	*Secondary* • Environmental impacts, loss of aesthetic values • Ecological costs, control of natural waterways, loss of wildlife habitat • Stimulated development around reservoirs • Water quality problems associated with impoundments due to increased retention time
Airport Placement	*Primary* • Air pollution • Noise pollution • Accidents and injury *Secondary* • Development pressures, industry, housing • Municipal wastes • Industrial wastes
Sewage Treatment Facilities	*Primary* • Water quality problems associated with impoundments due to • Problems of sewage sludge disposal • Aesthetic problems—odor *Secondary* • Determinant of urban growth, urban sprawl accompanied by air and noise pollution, congestion, placement of key facilities • Inflation of land values, encouraging farmers to sell or subdivide their land • Factor in rezoning or upzoning for higher densities

* Primary, those problems that are of immediate environmental concern—related to health and safety.

** Secondary, those probems which have a general environmental impact—related to the consumptive use of the land or the deterioration of ecological stability.

GUIDE SHEET #4

TOOLS FOR LAND USE PLANNING AND REGULATION

A. POLICE POWER

Zoning is carried out under the police power to regulate the use of land in order to protect public health, safety and general welfare. As the basic method of regulating the development of land for the past fifty years, zoning is relied upon at the local level to bring about desired land use patterns through the definition of specific use districts. Specificity is required in order to remove as much administrative discretion as possible. The defined use districting approach of zoning considerably reduces the flexibility necessary to promote multiple use of scarce land/water areas such as the coastal strip defines. See the Local Implementation Unit for further details.

B. EMINENT DOMAIN

In order to condemn land for public purchase, the government must show that the condemnation is necessary for a public purpose. Typical enabling laws for eminent domain contain long lists of specific purposes and refer to powers granted by other statutes. It still remains necessary to prove that environmental protection is one of the purposes for which condemnation is authorized. Localities are forced to rely on general arguments based on public health and general welfare for such protective efforts.

Eminent domain is the point of departure on the issue of controls and compensation. Regulatory controls have to be such that they do not justify compensation to individual owners and must bear a demonstrable relation to the public health, safety and welfare. Control through eminent domain requires payment of market value. The constitutional basis for this power is the Fifth Amendment, "No person...shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

C. TAXATION

The fact that municipal governments have had to rely on the property tax to finance public services has led to "fiscal" zoning. Zoning is administered with an eye to the bottom line of the accounting sheet. "Fiscal zoning" is zoning land for uses that will produce high revenues (industrial, commercial or high-income residential use) rather than low revenue uses such as, as low-income housing and open space. "Highest and best use" in zoning terms has usually meant best in terms of tax-generating potential - not best determined by physiographic or socio-economic criteria.

D. PURCHASING POWER

Without a doubt the most effective means for assuring control over land use and development is through outright purchase and ownership. For the most part acquisition is used only for land which is to be protected from development and secured as conservation space or parkland. Governmental bodies have been increasing their outlays for land purchase.

The rate at which land value is increasing poses a real limitation on reliance on acquisition as a means for controlling land. Local governmental units can buy real estate with money from their general funds but those monies are scarce. Alternatively, bonds can be sold to finance the initial capital requirements and a sinking fund created to pay off the bonds.

GUIDE SHEET #5

"What are the important legislative issues in land use management? Should the concern be with the process? Should policy be a major consideration?

There are no set answers. Each State has its own unique situation providing the light under which the proposal should be viewed. However, there are certain questions which will illuminate the consideration of any proposal. In attempting to offer a final word of guidance, the following are offered:

Who establishes policy at the various levels of government?

How far does the Legislature go in dictating policy?

Who is responsible for converting that policy into a working plan?

What role should the legislator play in molding public opinion in respect to land use?

What state efforts for improvement will be acceptable to the citizens of the State?

Will the proposed legislation resolve the inadequacy of existing laws?

Does the proposed legislation fulfill all legal requirements-state, federal and constitutional?

Which is the proper agency to administer the program?

Will there be sufficient funds available to support the program?

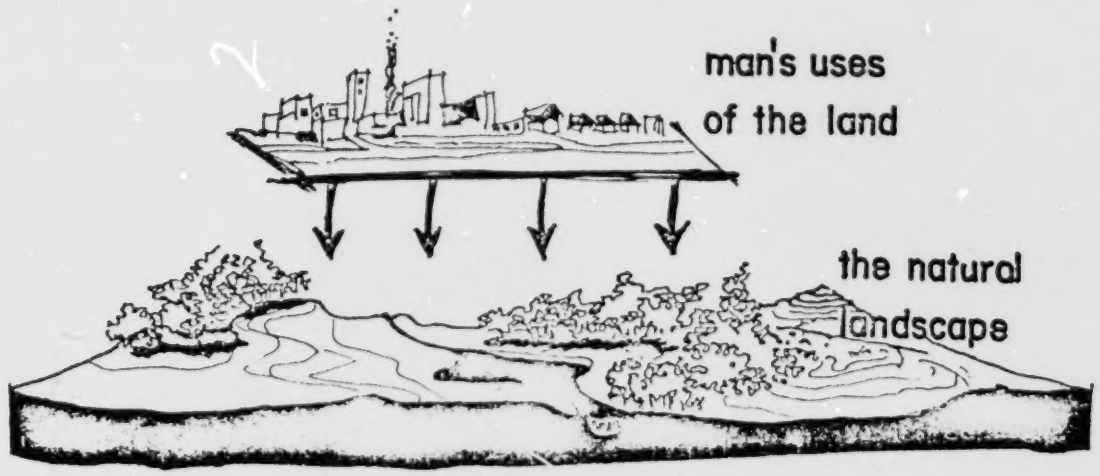
Will there be adequate manpower available to accomplish the job?

Is the proposed mechanism adequate to anticipate future needs so that potential problems are resolved before they happen?

What alternatives have been considered, and by whom?

What irreversible environmental changes will be made to the land?

Should land be specifically set aside and preserved intact for future generations?"



SOURCE: A Legislator's Guide to Land Management, Published December 1974 by The Council of State Governments, Iron Works Pike, Lexington, Kentucky 40511.

After you have finished, study the guidesheet; turn the tape recorder on!

Prerequisites for a successful state land use program

States are short on experience in land use control. Moreover, their needs and their programs vary. Certain general prerequisites are necessary if a state land use program is to be successful:

Adequate funding Effectively involving the state in land use management is expensive. Costs for staff, research, public meetings, publications and so forth are essential for a strong state role.

Citizen support Although geographic distance makes local citizen participation difficult, citizens throughout the state must demonstrate support for state legislation, policies, plans, and decisions. States must establish processes to inform and involve citizens in all phases of the development and implementation of land use programs through hearings, meetings, advisory boards, and so forth.

Administrative coordination If a state bypasses the existing system of local regulation when it sets up a state administrative system, the end product is two duplicating or overlapping systems, often doubling the time required and increasing the costs of development and administration. A single system with specific roles for each cuts costs and is more efficient. Disputed decisions could be appealed to an administrative or judicial body. States also need to coordinate separate programs, such as air and water pollution control and highway construction, at the state level.

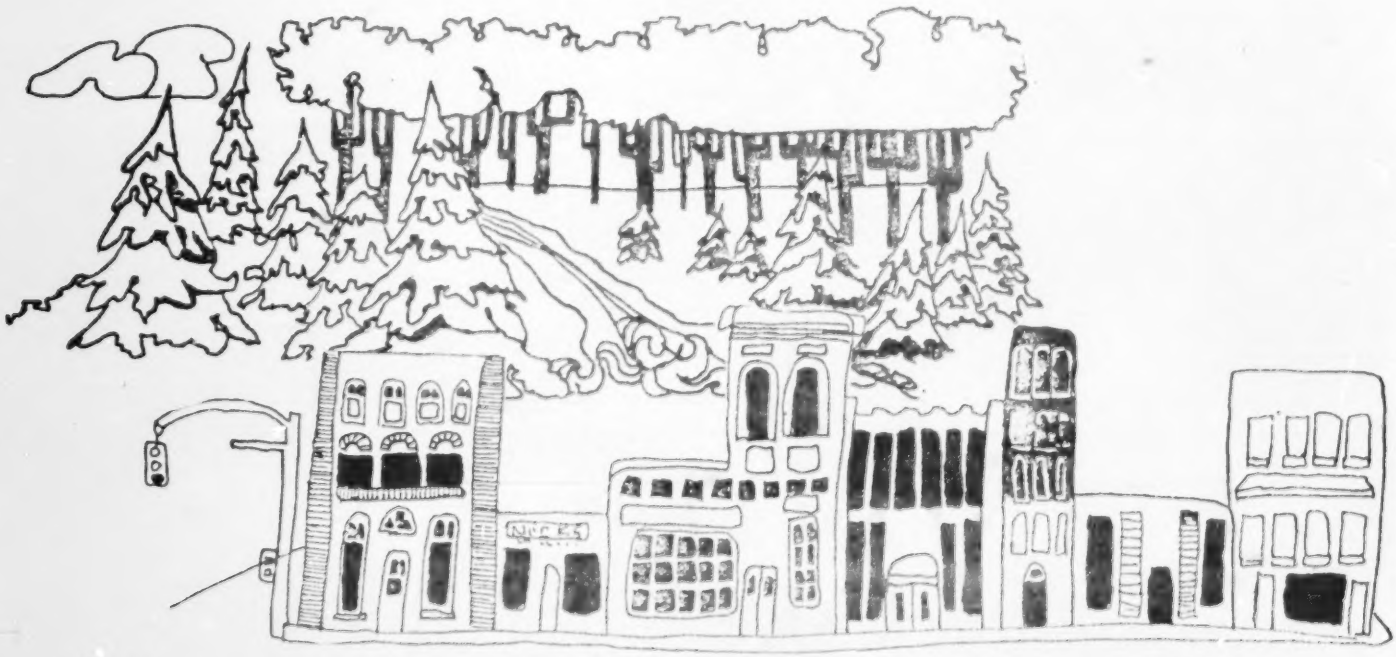
Adequate data base Data on land resources, population growth, and so forth are necessary to provide a sound basis for decision making and to legally justify state intervention in decisions of more than local concern. Such a data base can be extremely valuable in preparing environmental impact statements.

Local participation Local governments should be encouraged to exercise land controls wherever possible, and such processes as advisory boards should be set up to encourage maximum local input into state decisions.

Planning and regulation At any level of government, the planning process (evaluating alternative uses against overall goals and policies) and regulation (implementing plans) must be coordinated. One without the other will result in ineffective decision making.

Technical assistance Because local governments will still be responsible for the majority of day-to-day decisions, the capacity of localities to plan and control land use must be strengthened. Localities need technical advice, financial assistance, and legal authority to use innovative methods (such as land banking and transfer of development rights) to upgrade the quality of land use decisions.

Utilization of existing state authority Current state authority over construction and grant-in-aid programs such as highways and sewage-treatment facilities can stimulate more effective land planning and control.



SOURCE: LAND USE: Can We Keep Public And Private Rights In Balance? by League of Women Voters Education Fund, 1730 "L" Street, N.W., Washington, D.C. 20036

After you have finished reading the guide sheet, turn the recorder on again.

GUIDE SHEET #7

A LAND USE STRATEGY FOR PENNSYLVANIA

- - "Develop a process, not a plan. A land use strategy needs to establish a state-wide process which includes such elements as formulation of long-range policy, coordination of existing state programs and activities, development of relationships with local and regional governments, and development and enforcement of state controls. Such an effort involves careful consideration of various options and alternatives, but need not be predicted on preparation of a state land use plan.

  In Vermont, the required development of a State land use plan has led to strong disagreement over the plan's purposes and provisions. Although the on-going regulatory program is not directly based on the plan, the controversy has weakened general support for Vermont's land use effort.

- - Divide land use concerns between State and local government. While increased regional and state involvement is needed in land use decision-making, it should be carefully directed toward those matters of more than local significance. At least 90 percent of all land use decisions - - such as locating a gas station or siting a small apartment house - - should remain local concerns.

  There are, however, certain facilities, activities, or areas of interest which have an impact beyond local boundaries. These concerns (the siting of power plants, planning large shopping malls, protecting wetlands, etc.) should be planned and managed with the broader interests of the region and state represented.

- - Decentralize the administrative process. Most land use programs have been founded on state guidance and local operation. In Florida, for example, local governments administer State controls for both critical areas and developments of regional impact, with opportunity for the State to intervene where appropriate.

  Similarly, the Commonwealth - - as it develops policies and programs for matters of State concern - - should delegate administrative responsibility to its localities.

- - Reinforce and strengthen local planning capabilities. Strengthened local planning can assist localities to better enforce state and local controls, and, at the same time, complement state plans. Several states have required or encouraged local planning as one means of complementing an overall regulatory strategy. In Oregon, for example, counties are required to develop and implement comprehensive land use plans. The plans are reviewed by the State for consistency with state goals and guidelines.

  Both Maine and the Adirondack Agency provide incentives to local governments to develop land use plans and regulations. Under these programs, certain state development regulations are removed upon state approval of local plans and controls.

- - Develop a State land use strategy comprised of several program elements. Both the proposed national land use legislation and the draft ALI Model Land Development Code propose the development of comprehensive state land use programs which regulate critical development activities and environmental areas. This is the approach adopted by Florida.

  Other states have chosen to develop a series of separate programs which, in combination, enable the state to play an important role in land use planning and management. In Maine, for example, laws now exist to control major development, regulate shoreland areas, and manage the state's large expanse of unincorporated territory. Similarly, Minnesota has developed an impressive body of legislation, including a critical areas law, a power plant siting act, a deferred tax for preserving agricultural land, and a wild and scenic rivers act."

SOURCE: A LAND USE STRATEGY FOR PENNSYLVANIA., Prepared by Pennsylvania Land Policy Project, 204 Fifth Ave., Pittsburgh, Pennsylvania 15222.

GUIDE SHEET #8

A. ACT 380
THE FLORIDA ENVIRONMENTAL LAND AND WATER MANAGEMENT ACT

I. Act 380 required local implementation of State policies and provided for State intervention in two instances:

A. ... land use decisions in certain vulnerable and fragile areas called "areas of critical State concern."

B. ... decisions involving major development projects-called "developments of regional impact"- (DRI).

II. Act 380 defines three kinds of "areas of critical State concern:"

A. areas containing "environmental, natural or archeological resources of regional or statewide importance."

B. areas "affected by" or having a significant effect upon an existing or proposed major public facility or other area of major investment."

C. "proposed areas of major development potential- - such as a new community"

III. Weaknesses of The Critical Areas Section of Act 380

A. There is no provision for interim regulation of critical areas.

B. No more than 5 percent of Florida's total land area may be designated as "critical"

IV. Development of Regional Impact

A. Definition- "any development which, because of its character, magnitude or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."

B. A developer must provide the regional planning agency information concerning the effect of their development on:

1. environment and natural resources (water quality, air quality, noise levels, sedimentation, erosion, and animal life)

2. public facilities (sewage, solid waste disposal, power supply, schools, transportation).

3. economy (jobs, taxes, housing)

B. THE VERMONT LAND-USE AND DEVELOPMENT LAW

As the basis of granting permitts the law required that the board or district commissions determine that the proposed development or subdivision:

"1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents, and the applicable health and water resources department regulations.

"2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

"3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

"4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

"5) Will not cause unreasonable highway congestion or unsafe conditions with respect to use of existing or proposed highways.

"6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

"7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

"8) Will not have an undue adverse effect on the scenic or natural beauty of the area, esthetics, historic sites, or rare and irreplaceable natural areas.

"9) Is in conformance with a duly-adopted development plan, land-use plan, or land-capability plan.

"10) Is in conformance with any duly-adopted local or regional plan. . ."[10]

GUIDE SHEET #9

PENNSYLVANIA LAND POLICY SURVEY: DATA AND RESULTS

SAMPLE QUESTIONNAIRE

CODE 050
FILE 072347

PENNSYLVANIA LAND POLICY PROJECT
204 FIFTH AVENUE
PITTSBURGH, PENNSYLVANIA 15222

PENNSYLVANIA LAND POLICY SURVEY

I WE'D LIKE TO KNOW THE RELATIVE PRIORITY YOU ATTACH TO THE FOLLOWING LAND USE PROBLEMS WE FACE IN PENNSYLVANIA. PLEASE RANK THEM IN ORDER OF IMPORTANCE BY WRITING A "1" IN THE BOX BESIDE THE PROBLEM YOU CONSIDER TO BE THE MOST IMPORTANT, A "2" FOR THE SECOND MOST IMPORTANT, AND SO ON FOR ALL 10 CATEGORIES.

(1)	Preserving prime agricultural land	7 ☐ Card 1
(2)	Regulating strip mining	8 ☐
(3)	Protecting floodplains	9 ☐
(4)	Managing forest and woodland resources	10 ☐
(5)	Preserving unique or scientifically valuable natural areas	11 ☐
(6)	Protecting fish and wildlife habitats	12 ☐
(7)	Protecting historic sites	13 ☐
(8)	Providing open space and outdoor recreation opportunities	14 ☐
(9)	Siting key facilities, (e.g., airports, highway interchanges, power plants, sewage treatment plants, etc.)	15 ☐
(10)	Guiding the location of large scale developments, (e.g., industrial parks, large subdivisions, second home developments, large apartment houses/condominiums, etc.)	16 ☐

SEE QUESTIONS ON BACK OF PAGE

II BELOW ARE SEVERAL SUGGESTED METHODS FOR REGULATING LAND USE. CLEARLY NO ONE METHOD WILL SOLVE ALL LAND USE PROBLEMS SUCH AS THOSE LISTED IN QUESTIONS 1-10. HOWEVER, WE WOULD LIKE TO HAVE YOUR VIEW ON THE USEFULNESS OF EACH OF THESE FOR ITS INTENDED PURPOSE. PLEASE MARK PERTINENT BOXES.

		not at all useful	not very useful	moderately useful	very useful	no opinion
(11)	Zoning	17 ☐	18 ☐	19 ☐	20 ☐	21 ☐
(12)	Differential assessment, (e.g., lower assessment for lands in agricultural use.)	22 ☐	23 ☐	24 ☐	25 ☐	26 ☐
(13)	Public acquisition of land.	27 ☐	28 ☐	29 ☐	30 ☐	31 ☐
(14)	Subdivision regulations and building codes.	32 ☐	33 ☐	34 ☐	35 ☐	36 ☐
(15)	Controlling the location of water and sewer lines.	37 ☐	38 ☐	39 ☐	40 ☐	41 ☐
(16)	Controlling the location of roads.	42 ☐	43 ☐	44 ☐	45 ☐	46 ☐
(17)	Tax policies (in addition to the property tax).	47 ☐	48 ☐	49 ☐	50 ☐	51 ☐

III WE WOULD LIKE TO KNOW HOW YOU FEEL ABOUT SOME IDEAS THAT HAVE BEEN SUGGESTED FOR DEALING WITH PARTICULAR LAND USE PROBLEMS. PLEASE MARK PERTINENT BOXES.

		strongly disagree	moderately disagree	moderately agree	strongly agree	no opinion
(18)	Neighboring communities should have the right to review plans for major developments such as shopping centers, high rise apartments, or industrial parks, that are proposed to be located on or near their boundaries.	52 ☐	53 ☐	54 ☐	55 ☐	56 ☐
(19)	More control is needed on the location of commercial developments along roads, such as quick food stands, gas stations, etc.	57 ☐	58 ☐	59 ☐	60 ☐	61 ☐

GUIDE SHEET #9

		strongly disagree	moderately disagree	moderately agree	strongly agree	no opinion
(20)	New development should be encouraged near areas already served by public facilities such as sewers and water, rather than in rural areas where public facilities now are unavailable or in limited supply.	62 ☐	63 ☐	64 ☐	65 ☐	66 ☐
(21)	New towns should be planned and developed to "soak up" growth.	67 ☐	68 ☐	69 ☐	70 ☐	71 ☐
(22)	Other means should be found for financing local facilities & services such as roads & schools, so that communities would not need to rely so heavily on the property tax.	72 ☐	73 ☐	74 ☐	75 ☐	76 ☐
(23)	A state land use policy should give priority to preserving and protecting small towns.	77 ☐	78 ☐	79 ☐	80 ☐	Card 2 7 ☐
(24)	A principal purpose of a land use policy should be to protect natural ecosystems and maintain high environmental quality.	8 ☐	9 ☐	10 ☐	11 ☐	12 ☐
(25)	A high priority of a land use policy should be to help ensure an adequate supply of housing.	13 ☐	14 ☐	15 ☐	16 ☐	17 ☐

(26) Federal agencies now must file reports explaining the probable environmental, economic, and social impacts of their proposed projects and activities.

Do you think that it would be desirable to require the following to file such a report on the impacts of their proposed projects and activities? Please mark with an X.

	Yes	No	No opinion
a. State	18 ☐	19 ☐	20 ☐
b. Local municipalities & counties	21 ☐	22 ☐	23 ☐
c. Public utilities & large developments	24 ☐	25 ☐	26 ☐

SEE QUESTIONS ON BACK OF PAGE

IV

WHICH LEVEL OF GOVERNMENT SHOULD HAVE PRINCIPAL RESPONSIBILITY FOR DEVELOPING AND ENFORCING LAND USE REGULATIONS TO DEAL WITH PROBLEMS LIKE THOSE LISTED IN QUESTIONS 1-10? SHOULD SUCH RESPONSIBILITY BE DIVIDED BETWEEN SEVERAL GOVERNMENT LEVELS, AND IF SO, HOW? PLEASE INDICATE YOUR VIEWS BY MARKING AN X IN THE BOX WHICH BEST EXPRESSES YOUR FEELING ABOUT THE FOLLOWING STATEMENTS.

		strongly disagree	moderately disagree	moderately agree	strongly agree	no opinion
(27)	There should be only local government regulation of land use. (e.g., local municipalities and counties)	27 ☐	28 ☐	29 ☐	30 ☐	31 ☐
(28)	Land use problems are best resolved at the regional government level (e.g., regional planning commissions, etc.)	32 ☐	33 ☐	34 ☐	35 ☐	36 ☐
(29)	Land use regulations should be centralized at the State level.	37 ☐	38 ☐	39 ☐	40 ☐	41 ☐
(30)	Local land uses should be governed by local regulations, and land uses of State concern, such as power plant sites and large scale developments should be governed by state regulation.	42 ☐	43 ☐	44 ☐	45 ☐	46 ☐
(31)	The state should develop land use standards, with enforcement handled by local governments.	47 ☐	48 ☐	49 ☐	50 ☐	51 ☐

V

WE'D LIKE TO KNOW HOW YOU FEEL AND HOW YOU THINK THE AVERAGE PENNSYLVANIAN FEELS, ABOUT THE PRESENT LEVEL OF PUBLIC REGULATION OF LAND USE. MARK WITH AN X.

		need less public regulation	about right	need more public regulation	no opinion
(32)	How do you personally feel about the present level of public regulation (such as zoning, subdivision regulations, state pollution laws, etc.)?	52 ☐	53 ☐	54 ☐	55 ☐
(33)	How do you think most Pennsylvanians feel about the present level of regulations?	56 ☐	57 ☐	58 ☐	59 ☐

		not very knowledgeable	moderately knowledgeable	very knowledgeable
(34)	How well-informed do you consider yourself about such regulations?	60 ☐	61 ☐	62 ☐

GUIDE SHEET #9

VI PUBLIC REGULATION OF PRIVATE LAND USE IS OFTEN OPPOSED. WHAT DO YOU THINK ARE THE BASIC REASONS FOR THIS OPPOSITION? PLEASE MARK PERTINENT BOXES WITH AN X.

	least important	less important	moderately important	most important	no opinion
(35) Concern that land use regulation limits land value.	63 ☐	64 ☐	65 ☐	66 ☐	67 ☐
(36) Concern that land use regulation is an infringement on personal rights to use and sell land.	68 ☐	69 ☐	70 ☐	71 ☐	72 ☐
(37) Concern that land use regulation is a threat to jobs.	73 ☐	74 ☐	75 ☐	76 ☐	77 ☐
(38) Concern about the kinds of controls that would be applied.	78 ☐	79 ☐	80 ☐	Card 3 7 ☐	8 ☐
(39) Concern about who would administer the controls.	9 ☐	10 ☐	11 ☐	12 ☐	13 ☐
(40) Belief that there is no land shortage and therefore no need for land use regulations.	14 ☐	15 ☐	16 ☐	17 ☐	18 ☐

VII WHICH OF THE FOLLOWING DO YOU FEEL ARE THE MOST EFFECTIVE METHODS FOR IMPROVING CITIZEN PARTICIPATION IN LAND USE DECISIONS? PLEASE MARK PERTINENT BOXES WITH AN X.

	ineffective	moderately ineffective	moderately effective	effective	no opinion
(41) Public hearings	19 ☐	20 ☐	21 ☐	22 ☐	23 ☐
(42) Citizen membership on planning boards or commissions.	24 ☐	25 ☐	26 ☐	27 ☐	28 ☐
(43) Open all official meetings to the public	29 ☐	30 ☐	31 ☐	32 ☐	33 ☐
(44) Citizen advisory committees.	34 ☐	35 ☐	36 ☐	37 ☐	38 ☐
(45) Citizen initiated court suits	39 ☐	40 ☐	41 ☐	42 ☐	43 ☐
(46) Public announcement of the options being considered during the initial phases of the planning process	44 ☐	45 ☐	46 ☐	47 ☐	48 ☐

SEE QUESTIONS ON BACK OF PAGE

VIII THE MORE WE KNOW ABOUT YOU THE BETTER WE CAN CLASSIFY THE ANSWERS TO THIS SURVEY, SO PLEASE ANSWER AS MANY OF THESE CLASSIFICATION QUESTIONS AS YOU CAN.

49 50 For office use only.

(1) Your county is _____

(2) Your home is located in (Mark one)

City

51 ☐ under 5,000
52 ☐ 5,000 - 50,000
53 ☐ over 50,000
54 ☐ suburbs
55 ☐ farm
56 ☐ rural non-farm

(3) How long have you lived there:

57 ☐ less than 1 year
58 ☐ 1 - 5 years
59 ☐ 5 - 10 years
60 ☐ more than 10 years

(4) What is your age bracket?

61 ☐ under 18
62 ☐ 18 - 24
63 ☐ 25 - 34
64 ☐ 35 - 44
65 ☐ 45 - 54
66 ☐ 55 - 64
67 ☐ 65+

(5) In what capacity are you principally concerned with land use? If you are in one or more of these categories, please indicate the relative importance of these categories to the way you answered this survey: Put a "1" in front of your most significant land use interest category, then a 2, 3, 4, etc., for any others that might apply to you.

68 ☐ farmer
69 ☐ builder/developer
70 ☐ landowner
71 ☐ concerned citizen
72 ☐ sportsman
73 ☐ conservationist
74 ☐ businessman
75 ☐ architect/engineer/planner
76 ☐ public official
77 ☐ other: (please specify)
78 ☐ _____

(6) It is useful to our analysis of questionnaire results to know approximate gross family income levels. If you will, we'd appreciate your marking the appropriate group:

79 ☐ less than $5,000
80 ☐ $5,000 - $12,000

Card 4

7 ☐ $12,000 - $20,000
8 ☐ $20,000 - $50,000
9 ☐ over $50,000

GUIDE SHEET #10

STATE LAND USE PROGRAMS*
(September 1974)

	Statewide land use planning & control (a)	Coastal zone management (b)	Wetlands management (c)	Power-plant siting (d)	Surface mining (e)	Designation of critical areas (f)	Land use tax incentives (g)	Flood-plain management (h)
Alabama	P	—	—	—	yes	—	—	—
Alaska	—	—	—	yes	—	—	yes	—
Arizona	P	NA	—	yes	—	—	—	yes
Arkansas	—	NA	—	yes	yes	—	yes	yes
California	P	yes	—	yes	—	—	yes	yes
Colorado	P	NA	—	yes	yes	yes	yes	yes
Connecticut	P	—	yes	yes	—	—	yes	yes
Delaware	P	yes	yes	—	—	—	yes	—
Florida	P and R	yes	yes	yes	—	yes	yes	—
Georgia	P	—	yes	—	yes	—	—	—
Hawaii	P and R	yes	—	yes	—	yes	yes	yes
Idaho	—	NA	—	—	yes	—	—	—
Illinois	—	—	—	yes	yes	—	yes	—
Indiana	—	—	—	—	yes	—	yes	yes
Iowa	—	NA	—	—	yes	—	yes	yes
Kansas	—	NA	—	—	yes	—	—	—
Kentucky	—	NA	—	yes	yes	—	yes	—
Louisiana	—	—	yes	—	—	—	yes	—
Maine	P and R	yes	—	yes	yes	yes	yes	yes
Maryland	P and R	—	yes	yes	yes	—	yes	yes
Massachusetts	—	—	yes	yes	—	—	—	—
Michigan	P	yes	—	—	yes	—	—	yes
Minnesota	P and R	yes	yes	yes	yes	yes	yes	yes
Mississippi	—	yes	—	—	—	—	—	—
Missouri	—	NA	—	—	yes	—	—	—
Montana	—	NA	—	yes	yes	—	yes	yes
Nebraska	—	NA	—	yes	—	yes	yes	yes
Nevada	P and R	NA	—	yes	—	—	—	—
New Hampshire	—	—	yes	yes	—	—	yes	—
New Jersey	—	—	yes	yes(i)	—	—	yes	yes
New Mexico	—	NA	—	yes	yes	—	yes	—
New York	P	—	yes	yes	yes	yes	yes	—
North Carolina	P	yes	yes	—	yes	—	yes	yes
North Dakota	—	NA	—	—	yes	—	yes	—
Ohio	—	—	—	yes	yes	—	yes	—
Oklahoma	—	NA	—	—	yes	—	—	yes
Oregon	P and R	yes(j)	—	yes	yes	yes	yes	—
Pennsylvania	P	—	—	yes	yes	—	yes	—
Rhode Island	P	yes	yes	yes	—	—	yes	—
South Carolina	—	—	—	yes	yes	—	—	—
South Dakota	—	NA	—	—	yes	—	yes	—
Tennessee	—	NA	—	yes(k)	yes	—	—	—
Texas	—	yes	—	—	—	—	yes	—
Utah	—	NA	—	—	—	yes	yes	—
Vermont	P and R	NA	yes	yes	—	—	yes	yes
Virginia	—	yes	yes	—	yes	—	yes	—
Washington	—	yes	yes	yes	yes	—	yes	—
West Virginia	—	NA	—	—	yes	—	—	—
Wisconsin	P	yes	yes	—	yes	yes	yes	yes
Wyoming	—	NA	—	—	yes	—	yes	—
Guam	P and R	yes	—	yes	yes	—	—	yes
Puerto Rico	P and R	—	—	yes	yes	—	—	yes

*Indications that a State has a program in one of the above categories does not constitute an evaluation of the effectiveness of the program, nor does it indicate that the program is based on specific enabling legislation.

NA — Not applicable.

a. P indicates the State has a land use planning program under way. R indicates the State has authority to review local plans or has direct control.

b. State has authority to plan or review local plans or the ability to control land use in the coastal zone.

c. State has authority to plan or review local plans or the ability to control land use in the wetlands.

d. State has authority to determine the siting of power plants and related facilities.

e. State has authority to regulate surface mining.

f. State has established rules, or is in the process of establishing rules, regulations, and guidelines for the identification and designation of areas of critical state concern (e.g., environmentally fragile areas, areas of historical significance).

g. State has adopted tax inducements to withhold or delay development of open space (e.g., tax on present use, rollback penalty, contract between the State and landholders to provide preferential tax for commitment to open-space usage).

h. State has authority to regulate the use of floodplains.

i. Only in coastal zone area.

j. Partial.

k. Tennessee Valley Authority.

SOURCE: A Legislator's Guide to Land Management, Council of State Governments, Iron Works Dike, Lexington, Kentucky.

GUIDE SHEET #11

"REQUIRED LAND USE ELEMENT"

HUD "701" PROGRAM

A. The land use element required, is to identify "broad goals" and develop criteria to accomplish a series of annual objectives to enable states, local governments, and planning agencies to:

A. **Integrate** present land use policies and planning activities.

B. Have the **integrated policies** serve as a guide for **governmental** decision making "on all matters relating to the use of land"

C. Lead to a co-ordinating of all land use objectives and policies of all levels of government

D. Allow for individual jurisdictions to formulate a priority level of land use problems for this area.

Priorities of "HUD 701" Program

a) identification of existing uses of land and land resources

b) projected land use needs and land resource development

c) identify public services needs

d) identify open space needs

e) identify transportation needs

f) impact of recipient's proposed policies

i) on air and water quality
ii) areas of critical concern
iii) natural resources
iv) distribution of growth
v) conservation of energy through proper land use

g) development of policies to facilitate recovery of energy resources through consideration of environmental protection and future reuse of the land.

B. The Coastal Zone Management Act

The act, in dealing with land use within the coastal zone, specifies that the state will:

i) identify boundaries of the coastal zone
ii) define permissible land uses
iii) inventory-designate "areas of particular concern"
iv) develop criteria to control land uses
v) develop priority of uses

After you have finished studying this guidesheet, turn the **tape recorder on!**

GUIDE SHEET #12 **What is an Environmental Impact Statement?**

What Actions Must Statements Cover?

The actions for which agencies must prepare impact statements must be "major" and "environmentally significant," such as:

1. Agency recommendations on their own proposals for legislation.
2. Agency reports on legislation initiated elsewhere but concerning subject matter for which the agency has primary responsibility.
3. Projects and continuing activities which may be
   a. undertaken directly by an agency;
   b. supported in whole or in part through Federal contracts, grants, subsidies, loans or other forms of funding assistance; or
   c. part of a Federal lease, permit, license, certificate or other entitlement for use.
4. Decisions of policy, regulation and procedure-making.

All of the following actions are considered major and/or environmentally significant.

1. Actions whose impact is significant and highly controversial on environmental grounds.
2. Actions which are precedents for much larger actions which may have considerable environmental impact.
3. Actions which are decisions in principle about major future courses of action.
4. Actions which are major because of the involvement of several Federal agencies, even though a particular agency's individual action is not major.
5. Actions whose impact includes environmentally beneficial as well as environmentally detrimental effects.

A draft statement must be prepared and circulated for comment at least 90 days before the proposed action. A final statement must be made public at least 30 days before the proposed action. Any agency unable to meet these requirements must consult with CEQ.

Source: In Productive Harmony-Environmental Impact Statements-Broaden the Nation's Perspectives, U.S. Environmental Protection Agency, Washington, D.C. 20460

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Contents of the Statement

Each environmental impact statement must include:

1. A detailed description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact.
2. Discussion of the probable impact on the environment, including any impact on ecological systems and any direct or indirect consequences that may result from the action.
3. Any adverse environmental effects that cannot be avoided.
4. Alternatives to the proposed action that might avoid some or all of the adverse environmental effects, including analysis of costs and environmental impacts of these alternatives.
5. An assessment of the cumulative, long-term effects of the proposed action including its relationship to short-term use of the environment versus the environment's long-term productivity.
6. Any irreversible or irretrievable commitment of resources that might result from the action or which would curtail beneficial use of the environment.

A *final* impact statement must include a discussion of problems and objections raised by other Federal, State and local agencies, private organizations and individuals during the draft statement's review process.

What Does a Statement Look Like?

An environmental impact statement may consist of a few pages or a few hundred pages depending on the complexity of the proposed action under review. Each statement ordinarily is introduced by a summary sheet suggesting the nature of its contents; e.g.:

Environmental Impact Statement

Draft _____ Final _____

Name of responsible or principal agency and appropriate operating division.

1. Administrative action _____ Legislative action _____.
2. Brief description of action, indicating States and counties particularly affected.
3. Summary of environmental impact and adverse environmental affects.
4. List of alternatives considered.
5. For *draft* statement, a list of all Federal, State and local agencies from which comments have been requested.

   For *final* statement, a list of all Federal, State and local agencies and other sources from which written comments have been received.
6. Dates draft and final statements are filed with CEQ and made available to the public.

TABLE B

Land Uses Resulting in Environmental Problems

Land practice or use	Environmental problem
Clear-cutting	Erosion, Sedimentation, Nutrient runoff, Loss of wildlife habitat, Destruction of aesthetic values, Disruption of watersheds, Loss of recreational values.
Strip mining	Acid mine drainage, Sedimentation, Loss of farmland, Aesthetic problems, Damage to wildlife and fish habitat.
Agriculture	Feedlot and nutrient runoff, Eutrophication, Pesticides runoff, Erosion, Soil compaction, Animal waste disposal, Predator control, Salinity of irrigation return flow, Induced changes in vegetation cover, Disruption of ecological stability.
Highways and airports	Air pollution, Sedimentation, Secondary development, Noise pollution, Destruction of ecological habitats, Litter, Land disruption, High energy consumption with their use.
Powerplants	Aesthetic problems from transmission lines, Thermal discharges, Air pollution, Disposition of radioactive wastes.
Urban sprawl	Loss of agricultural land, Air pollution, Noise pollution, Street runoff, Paving over aquifer recharge zones, Disruption of ecological stability, Development on flood plains, Water pollution.
Waste disposal	Landfill of marshes and wildlife habitat, Open burning of slash, garbage, and sewage sludge resulting in air pollution, Noise problems with trash collection.

TABLE C

Pollution Abatement Requiring Land Use Controls*

Problem	Source
Deterioration of Water Quality	—Mining operations (acid mine drainage) —Feedlot runoff —Agricultural chemical runoff (herbicides, pesticides, and fertilizers) —Dredge spoil disposal —Sewage sludge disposal —Shoreline development
Eutrophication	—Nutrient runoff (clear-cutting and agriculture) —Construction of reservoirs (increased retention time) —Shoreline development
Sedimentation	—Soil erosion (agricultural practices) —Erosion (highway and other construction; clear-cutting) —Stream channelization
Contamination of ground water	—Deep-well disposal —Paving of aquifer recharge zones —Septic tanks and leach fields —Leaching from landfills
Noise pollution	—Airports —Highways —Heavy industry
Air Pollution	—Airborne soil (from agricultural practices) —Urban complex sources (urban sprawl, leap-frogging, strip development) —Powerplant and other facilities siting —Highway placement and design —Burning of wastes (agricultural stubble and slash; garbage) —Heavy industry (refinery siting)

* These problems are directly related to EPA's air, water and noise pollution abatement mandates.

Source: "Land Use and Environmental Protection"
U.S. Environmental Protection Agency
Youth Advisory Board
Washington, D.C. 20460

After you have finished reviewing this guide sheet turn the recorder on!

Federal Water Pollution Control Act

Several provisions of the FWPCA impact on land use. Perhaps the most important is section 208, which establishes a procedure under which states or regional agencies are required to develop regulatory programs to control various types of *non-point source pollution*. Pursuant to federal guidelines, the governor of each state is required to designate areas with "substantial water quality control problems" and to name for each area an organization that is then required to operate a "continuing areawide waste treatment management planning process." Plans prepared under this "process" must be submitted to EPA for approval.

Each plan prepared under section 208 must address the following non-point source problems: agriculturally and silviculturally related non-point sources of pollution; mine related sources of pollution; and construction activity related sources of pollution. Most important for our purposes today, each plan must set forth procedures "including land use requirements" to control to the extent feasible such sources of pollution. In addition, the plans must address the problem of disposal of solid waste that may affect ground or surface water quality. Thus, the states are specifically called upon to incorporate land use planning into their control of non-point sources of pollution.

The plan under ~~this~~ section 208 is to identify treatment areas, and projected needs for a 20-year period of time, including "any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff system and a program to provide necessary financial arrangement."

EPA is also attempting to coordinate Section 208 with HUD's 701 program and the Coastal Zone Management program.

With the recent passage of the Safe Drinking Water Act, provisions are made for protecting critical water resource areas. The Act influences land use decisions by "recognizing the importance of a thorough evaluation of land use decisions well in advance of when problems arise."

All of the legislation involving EPA regulation has not been established to deal specifically with land use control—but they nonetheless have a direct impact upon the use of land.

Other sections of the FWPCA, although not intended perhaps to directly affect land use, certainly have an important impact on land use planning. In issuing municipal sewage treatment plan permits, EPA faces the question of how to ensure local efforts to anticipate and provide for growth. Such planning actions in high-growth situations are particularly important because of section 402(h) of the Water Act. That section empowers EPA, or a state, if it has obtained permit authority, to seek a court order imposing a ban or restrictions upon sewer connections or requirements. In short, EPA is trying to make certain that municipal permits in rapidly developing areas provide adequate treatment capacity for the increasing waste loads generated by local population growth.

Municipal permits must provide for secondary treatment of sewage. This requirement has several land use implications, including site relocation and the vastly increased space needed for sludge disposal.

Industrial permits tend to shift water pollution problems to land pollution problems associated with solid waste disposal. This displacement creates a problem of transporting and disposing of industrial waste, and while water quality improves, land values tend to be adversely affected in disposal areas. Industrial permits may also require larger tracts of industrial land for treatment and disposal facilities, a requirement which can force zoning changes, or industry movement where such land is unavailable, or the termination or cancellation of certain industrial uses of land.

On the positive side, cleaner water provides a more salubrious habitat for land- and marine-based wildlife, stimulating sport and recreational development along water frontage. Amplified availability of clean water also intensifies commercial and suburban development in areas affected by control measures. Thus, in the long term water pollution control and comprehensive land use planning are tightly intertwined.

SOURCE: Excerpts from Environmental Comment, Urban Land Institute.

TABLE D

Environmental Protection Requiring Land Use Controls*

Problem	Source
Destruction of ecological stability	—Drainage of wetlands —Grazing practices —Landfilling of salt marshes and other wetlands —Land disposal of wastes (e.g., fly ash dredge spoil, sewage sludge) —Development on flood plains —Clear cutting —Soil depletion (by intensive use of chemicals in agriculture) —Stream channelization —Predator, insect, and weed control —Monocrop agriculture —Persistent environmental toxins
Loss of aesthetic values	—Urban sprawl (strip and leapfrog development) —Development in the coastal zone —Mineral extraction —Clear cutting —Power transmission lines —Billboards —Recreational development —Transportation development —Second home development

* These problems are among those in which EPA must become involved in order to take an holistic approach to environmental protection.

TABLE E

Implicit Land Use Authorities

Act	Section	Subject
Federal Water Pollution Control Act Amendments of 1972	104	Development of new control methods
	105	Research and Development grants
	107	Mine Water Pollution
	201	Sewage Waste Management
	204	Limitation on sewage service
	208	Areawide waste treatment management
	209	River basin plans
	302	Special standard
	303	Water quality standards and implementation plans
	305	Water quality inventory
	314	Clean lakes
	403	Ocean dumping
	404	Dredge and fill material permits
	405	Sewage sludge disposal
Clean Air Act of 1970	110	Land use transportation controls
	309	Federal impact
Federal Insecticide, Fungicide and Rodenticide Control Act of 1972	3	Registering products
	13	Seizure because of adverse environmental effects
Solid Waste Disposal	3253	Research and demonstration
	3254(a)	Planning grants
	3254(b)	Demonstration grants
	3254(c)	Waste recovery
	3254(e)	Federal agencies
Noise Control Act of 1972	4	Federal agency jurisdiction
	4(c)(1)	Coordinate Federal programs
	4(c)(2)	Federal agencies' consultation with Administrator
	5(a)(1)	Health and welfare criteria
	5(a)(2)	Noise standards
	7	Airport and aircraft noise
	14	Research

Source: "Land Use and Environmental Protection"
U.S. Environmental Protection Agency
Youth Advisory Board
Washington, D.C. 20460

After you have finished reviewing this guide sheet turn the recorder on!

GUIDE SHEET#16

National Flood Insurance Program

Table I *

How the National Flood Insurance Program Works as Amended by PL 93-234, The Flood Disaster Protection Act of 1973

Community	HUD	Chargeable or Subsidized Insurance	Actuarial or Unsubsidized Insurance
1. Writes to HUD, expressing interest in eligibility for flood insurance after which HUD sends forms and sample land use resolution; or	1a. Notifies community of tentative identification as containing one or more flood prone areas and sends application forms and sample land use resolution.	Not available	Not available
2. Community adopts initial land use measures and applies for eligibility.	3. Designates community as eligible for sale of subsidized insurance under Emergency Program within six working days after receiving completed application. HUD issues Flood Hazard Boundary Map delineating flood prone areas in community, then contracts with technical agency for rate study.	Available for all construction until date flood insurance rate map and elevation data for the area is published or until December 31, 1974, whichever is later.	Not available
	4. Provides community with Flood Insurance Rate Map and 100-year flood elevation data. Community is given 6 months to adopt 100-year flood standard in its local zoning and building code ordinances.	Continues to be available for existing and new construction but not for buildings constructed within the hazard area after the Flood Insurance Rate Map publication date so long as it is published after December 31, 1974.	Available to all types of construction new or old.

Available Limits of Coverage	Subsidized Coverage	Total Coverage	Rates per $100 of Coverage (Subsidized Only)
Single family residential	$ 35,000	$ 70,000	.25
Other residential	100,000	200,000	.25
Nonresidential	100,000	200,000	.40
Contents, residential	10,000	20,000	.35
Contents, nonresidential	100,000	200,000	.75

SOURCE: "Analysis of the National Flood Insurance Program" Environmental Comment, November, 1974, No. 15, Urban Land Institue.

One of the most important provisions of the flood insurance legislation is its land use criteria designed to spur the adoption of state and local measures aimed at restricting the future development of land which is exposed to flood hazard. The objectives of federal criteria are to:

1) restrict the development of land exposed to flood damage, where appropriate,
2) guide the development of proposed construction away from areas threatened by flood hazards,
3) assist in reducing damage caused by floods, and
4) Otherwise improve the long-range management and use of flood-prone areas.[6]

In order for a community to qualify for participation in the program, it must agree to adopt and enforce adequate land use and control measures, consistent with federal criteria. The minimum area for control and regulation is that area within the level of the 100-year flood.[7] The 1973 Act through its prohibition on federal financial assistance to property lying within a flood hazard area effectively prevents any new building below the 100-year flood level, unless the structure is totally flood-proof.

The Act presently applies to property owners who (1) live in an area identified by HUD as being a "flood-prone area," and (2) who, also, live in communities where flood insurance is currently available. In order to be eligible for any new or additional federal or federally-related financial assistance for a building or home located therein, these property owners are required to purchase flood insurance as a condition of eligibility for federal financial assistance under any of the HUD-FHA insurance programs, the Veterans Administration home loan programs, the Farmers Home Administration loan program or as a condition to any loan made by a federally supervised bank, savings and loan institution, or other similar federally related institution.

The Act, also, affects homes under construction or undergoing substantial improvement in flood-prone areas by providing that flood insurance at subsidized rates will be available on such structures through December 31, 1974 or the effective date of the community's rate map, whichever is later.[2] After the rate map is published, flood insurance will be available but at the higher actuarial rate.

The third important implementing date of the Act is July 1, 1975, after which time federal financial assistance or loans by federally supervised lending institutions in connection with property located in flood-prone areas will be prohibited unless the community is participating in the flood insurance program.

HISTORIC PRESERVATION

- *Grants-in-aid* for surveys, planning, acquisition, restoration, and development are administered by the National Park Service under the provisions of the National Historic Preservation Act of 1966. From its inception to November 30, 1973, awards to Pennsylvania totalled $342,229.71. Unfortunately, the program suffers from chronic under-funding; the states have indicated their willingness to match four times the Federal amounts that have been appropriated in recent years.
- *The National Historic Landmarks Program*[22] registers "historic places judged to have exceptional value to the Nation as a whole rather than to a particular state or locality." Pennsylvania's importance in the Nation's history is attested to by the fact that 59 historic landmarks have been registered in the Commonwealth.
- *The National Register of Historic Plans*[23] publishes a list of "distinctive sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture — a protective inventory of irreplaceable resources . . ." National landmarks are automatically included on the Register, which also includes properties of state or local significance nominated by the state and approved by the National Park Service.
- *The Historic American Building Survey* catalogues buildings of architectural merit and historic association, and preserves drawings, plans, photographs, and other documentation of them in a permanent national architectural archive. The Historic American Engineering Record performs a similar function for engineering works, structures, and systems.
- *The National Park Service Archeological Program* is an effort to recover and protect archeological remains. The program includes salvaging knowledge and evidence from areas before they are flooded by Federal impoundments; preserving ruins, earthworks, and building foundations revealed by archeology; and publishing archeological information.

SOURCE: A Land Use Strategy for Pennsylvania, Pennsylvania Land Policy Project, 204 Fifth Ave., Pittsburgh, Pennsylvania 15222.

STATE AND FEDERAL IMPLEMENTATION

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Urban Land Institute, Environmental Comment.

This is an excellent publication of the ULI that summarizes the effect of many environmental programs on land use. Below is a list of two of the more useful issues:

Issue No. 15, November 1974 - Analysis of National Flood Insurance Program.

Issue No. 11, July 1974 - Impact of Federal Regulations on Land Use.

A Land Use Strategy for Pennsylvania. Pennsylvania Land Policy Project, 204 Fifth Ave., Pittsburgh, Pennsylvania 15222, 1975.

Supporting documents:

Laws Which Regulate Land Use in Pennsylvania

State Land Use Programs: Issues and Options

An Operational Framework for Coastal Zone Management Planning. Prepared by Meta Systems, Inc., Cambridge, Mass., 1975.

Plan of Conservation and Development for Connecticut. Dept. of Finance and Control, State of Connecticut, 340 Capitol Ave., Hartford, Conn. 06115, 1974.

State Land Use Programs. Committee on Interior and Insular Affairs, U.S. Senate, 1974.

Audio Tape Script State & Federal Implementation

Fundamental to all of the abuses and misuses of the land is the attitude with which Americans view land. Traditionally, land has been viewed as a commodity--something to be bought, sold, and developed for profit--rather than as a resource to be wisely managed and protected. Use of the land has been a matter of expediency and the question of appropriatoness has seldom been raised even over the most abusive land use practices.

This attitude originated in the common-law tradition of land ownership. The concept was reenforced in early America and is so deeply woven into the attitudes of this Nation that it still governs our public and private land use decisions. These basic concepts that shape our Land use attitudes are listed on guide sheet #2, part A. They Are:

THE PIONEER ETHIC - Nature was seen as something to be challenged and conquered.

THE MYTH OF SUPERABUNDANCE - Land and natural resources were seen as being limitless.

THE LOCKEAN PRINCIPLE OF LAND OWNERSHIP - Man had the right to do what he wanted with his own land.

Today, attitudes are changing. Man's survival depends upon his living in harmony with nature. Our resources are not limitless.

Man's use of the land without regard to the health and welfare of others and to the environment is now being strongly challenged. Even with these new realizations, however, our actions still reflect outdated attitudes. More people with more money, enjoying more mobility and more leisure time, producing and consuming more each year, represent our individual and collective aspirations. Yet, these goals require ever-increasing quantities of land. Critical environmental areas are being lost, scenic areas degraded, coastal areas developed, and prime agricultural land converted into shopping centers, housing tracts, and mounds of overburden.

In the past land use planning and public policy planning have frequently been ineffective in preventing land misuse or protecting environmental quality. These shortcomings outlined on guidesheet #2, Part B,stem from four basic sources.

* Inadequate consideration of the natural environment in the planning process.
* Failure to take a comprehensive approach to land use decision making.
* Single purpose planning.
* Inadequate implementation of plans.

Turn now to guidesheet #3

Traditional land use planning has taken the zoning approach. Various urban uses--residential, industrial, and commercial--are isolated from each other to reduce nuisances and to protect human health, safety, and welfare. Although there are examples of planning decisions being based on environmental criteria, for the most part, protection of environmental quality and finite resources has not been fundamental to the planning process. Ignoring physical and ecological factors has resulted in property damage and destruction of environmental quality.

Local land use decisions frequently have an areawide, State, or even national impact on the environment and our natural resources. Outdated attitudes and legal concepts which govern our land use decision making and prevent public and private institutions from effectively dealing with land use problems that are changing. This new land ethic stresses nonconsumptive use of land and encourages greater individual involvement in the land use planning process. In short, land is slowly being viewed as a valuable resource to be wisely managed and protected rather than a commodity to be carelessly exploited and misused.

A third shortcoming of the planning process is its single-purpose nature. The object of single-purpose planning, for such things as highways, sewers, airports and water supply systems, is primarily to get the job done for the single purpose. Highways, for example, are planned to facilitate movement from urban center to urban center. Ample consideration is not always given to the dislocation of people, the disruption of the natural environmental, and the stimulus to secondary development.

Although the goal of planning is usually to enhance the quality of life, it is frequently not realized. The lack of coordination, the absence of analyzing secondary impacts, and the failure to recognize the synergisms involved has led to degradation of the human environment.

Guide Sheet #3 briefly outlines some of the problems resulting from ignoring environmental factors and from single-purpose planning. Stop the recorder while you study Guide Sheet #3 (Pause)

The process of change with record to land use control is well summarized by Fred Bosselman and David Callies in their publication, "The Quiet Revolution in Land Use Control", prepared for the President's Council on Environmental Quality. They reported:

> ("This country is in the midst of a revolution in the way we regulate the use of our land. It is a peaceful revolution, conducted entirely within the law.) It is a quiet revolution, and its supporters include both conservatives and liberals. It is a disorganized revolution, with no central cadre of leaders, but it is a revolution nonetheless.
>
> "The ancient régime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of individual local governments, each seeking to maximize its tax base and minimize its social problems, and caring less what happens to all the others.
>
> "The tools of the revolution are new laws taking a wide variety of forms but each sharing a common theme--(the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land.)"

If one were to pinpoint any single predominant cause of the quiet revolution it is a subtle but significant change in our very concept of the term "land," a concept that underlies our whole philosophy of land use regulation. "Land" means something quite different to us now than it meant to our grandfather's generation. Its new meaning is hard to define with precision, but it is not hard to illustrate the direction of the change.

Basically, we are drawing away from the 19th century idea that land's only function is to enable its owner to make money. One example of this change in attittude is that wetlands, which were once characterized as "useless," are now thought of as having "value." As we increasingly understand the science of ecology and the web of connections between the use of any particular piece of land and the impact on the environment as a whole we increasingly see the need to protect wetlands and other areas that were formerly ignored.

The new attitude toward land can also be seen reflected in the increasing concern about its scarcity. Industries that in an earlier day seemed to have their choice of an unlimited supply of land now see land as a limiting factor. With some, such as the forest products industry, this recognition came early--with others, such as agriculture, it is just beginning in states like Hawaii and California.

Conservationists describe the changing attitude toward land by saying that land should be considered a <u>resource</u> rather than a <u>commodity</u>. But while this correctly indicates the direction of the change, it ignores the crucial importance of our constitutional right to own land and to buy and sell it freely. It is essential that land be treated as <u>both</u> a resource and a commodity. The right to move throughout the country and buy and sell land in the process is an essential element in the mobility and flexibility our society needs to adjust to the rapid changes of our times. Conservationists who view land only as a resource are ignoring the social and economic impact that would come with any massive restrictions on the free alienability of land. But land speculators who view land only as a commodity are ignoring the growing public realization that our finite supply of land can no longer be dealt with in the freewheeling ways of our frontier heritage.

The justification for land use planning goes this way: In a free enterprise society, the development of land often has hidden costs which are not completely reflected by the market pricing system. While the private owner does pay the costs of acquiring and developing land, other costs stemming from the owner's decisions are borne by other people. For instance, the costs of water pollution or of cleaning up water pollution, the costs of traffic congestion or of controlling or reducing it, the costs of crowded schools or of improving schools are very often borne not by the person who profits from the land use choice but by neighbors or by a later generation. The market system is imperfect because private owners may not want to pay the additional costs, lack complete knowledge, or work in a noncompetitive situation. Land use planning supplements the market pricing system by considering public as well as private costs and needs.

At the same time, it has been argued that a single developer cannot be responsible for all the costs inherent in land development. Pollution costs are cumulative, while standards may be new. And development can produce benefits, too, by providing new housing and employment opportunities, for instance.

What are the tools available for land use planning and regulation?

Subject to the U.S. Constitution, the States are the sources and the seats of sovereign power. This applies to the inherent powers of eminent domain, taxation, and police power. An extension of this is the authority to regulate land uses within state borders.

Land use regulation has been approached primarily as a local government zoning problem for the last 50 years. However, when the recent dramatic changes in our metropolitan and rural areas are considered, the local zoning approach may no longer be an effective way to deal with contemporary land use problems. Many state legislative committees have supported the concept of certain statewide regulations, and as time passes, more have become convinced such regulation is vital to the future of their State.

The following discussion will quickly survey the powers available to states in land use regulation. Refer to guide sheet #4 as we contine our discussion. We will begin with the police power.

The police power is the inherent power of government to exercise reasonable control over persons and property in the interest of the general security, health, safety, morals and welfare. When a government directly regulates or controls private land without monetary compensation, ~~for example~~ it is exercising its police power. This power resides with the states, according to the 10th Amendment of the U.S. Constitution, which declares, "The powers not delegated to the United States... nor prohibited the the States, are reserved to the States..." But the states, traditionally regarding land use as a local matter, have delegated much of this power and responsibility to local governments.

For more details on the zoning process, special zoning categories and local regulation refer to the Local Implementation Unit in this Kit.

Governments also have the power of eminent domain, the power to condemn and purchase private land for public purposes, such as highways or parks. The sheer monetary burden of outright purchases makes widespread use of this power by local and state governments impractical. To date, the federal urban renewal program is the largest public effort to acquire urban land for redevelopment. Other examples of the use of eminent domain authority include highway programs, land banking, purchase of land for public parks, and large-scale land assembly for the construction of new towns.

Taxation is another important power. In fact, the property tax is often cited as a chief cause of distortion in land use patterns. Because local governments rely so heavily on the property tax for revenues, communities have, in effect, practiced "fiscal zoning," that is, zoning land for uses that will produce high revenues-rather than low revenues.

Zoning, of whatever kind, has in practice exerted less influence on land use patterns than has the power to spend public monies-the power of the purse. By providing or extending services, subsidizing private activities through grant-in-aid programs and loan guarantees, and selectively locating major installations, government at all levels has affected land use decisions and values. The location and design of water and sewer lines, airports and highways, for example, can spur intense land development by providing access to an otherwise quiet rural community.

One of the most important issues in any land regulatory system is the extent to which the use of land may be restricted without violating constitutional rights. Almost every state and local government that is trying to implement an environmentally-oriented land regulatory system finds itself plagued with constitutional doubts. The constitution prohibits the "taking" of property without payment of just compensation. Judicial interpretations of this clause have held that the regulation of property in a manner to severely limit its use may in some cases be interpreted as such a taking. These cases pose a constant problem to land use regulators.

Most land regulatory systems find a need to prevent all "use" of at least some portion of the land within their jurisdiction. Funds are not usually available to pay the owners of this land for the loss in speculative value to which they might claim to be entitled. The administrators therefore find themselves in the difficult position of either permitting uses that would be environmentally harmful or facing court challenges that may endanger the entire regulatory program.

Opponents of strong land use regulations decry erosion of private property rights and enlargement of government control. They believe that land use regulation is a power inconsistent with capitalism and a free society--that a fundamental interdependence exists between the personal right to liberty and the personal right to property. To the rights guaranteed by the Declaration of Independence--"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness"--many state constitutions added, "the right of acquiring, possessing, and protecting property."

Advocates of stronger public controls recognize that the just compensation entailed in bringing lands under public control through purchase would be prohibitively expensive. They argue that there are, nonetheless, legitimate restraints on the concept of private control of land. They believe that in some situations the public good transcends the private right to sell or to lease for whatever use will bring the owner the maximum amount of money. They say that development is as much a privilege as a right, that if development is indeed a private right, then some public obligations go along with that right.

This dilemma posed by the "taking" issue requires a creative legal response on the part of the regulatory agencies and their attorneys. A number of approaches are promising:

The Supreme Court of the United States has frequently upheld regulatory systems that prevent any development of a man's land if the regulation is essential to promote the public health or safety, and the preservation of a livable environment, the courts feel that a desirable ecological balance is in the long run clearly essential to the health of the nation. Expert ecological testimony, when combined with a sophisticated analysis of existing case law, can provide sound constitutional arguments for the validity of many regulatory measures that might otherwise be thought so restrictive as to require compensation.

In addition, draftsmen of regulations need to make a careful analysis of the types of activities that may be allowed to take place on land without destroying environmental values. Too often regulations have taken the form of blanket prohibitions when a variety of activities could be permitted on the land without detracting from the values that the regulations are designed to protect.

Also, further exploration is needed to provide a sound legal rationale for setting off benefits created by the regulatory program against the losses caused by restrictions. A regulatory program that prohibits the filling of low-lying land in a flood plain, for example, may reduce the value of the portion of a man's land on which filling is prohibited, but it may substantially increase the value of the higher land by reducing the threat of flooding. Mechanisms by which these benefits can be set off against any losses can be very helpful in reducing the necessity of paying compensation.

Finally, where compensation must be paid, new legal methods of relating the amount of compensation more exactly to the losses suffered should be devised. The government should not be forced to purchase the entire land if some lesser remedy provides equitable compensation. Compensation through the purchase of development rights, a year-to-year-interest or some type of easement should be considered.

One proposed concept for controlling land use, which respects private investment in land and at the same time allocates land use in the public interest, is that of transferable development rights. In essence, it means that if a government were to prohibit development in an environmentally sensitive zone, it would allow an owner to transfer his frozen development potential to a more appropriate district. Up to the present, however, there has been little actual experience with development rights.

How <u>does</u> your state begin to develop an implementation system for a land use decision making process? (Pause) Unfortunately there are no set guidelines or rules for states to follow to a successful program. However, it is possible to examine several approaches to gain insights for your state.

Turn to guide sheet #5. (Pause) The Council of State Governments recently published a booklet entitled "A Legislator's Guide to Land Management", which suggests a set of questions every legislator should ask about proposals for state level land use management. These are reproduced for you on

guide sheet #5. Study the guidesheet as we review the questions.

Who establishes policy at the various levels of government?

How far does the Legislature go in dictating policy?

Who is responsible for converting that policy into a working plan?

What role should the legislator play in molding public opinion in respect to land use?

What state efforts for improvement will be acceptable to the citizens of the State?

Will the proposed legislation resolve the inadequacy of existing laws?

Does the proposed legislation fulfill all legal requirements--state, federal and constitutional?

Which is the proper agency to administer the program?

Will there be sufficient funds available to support the program?

Will there be adequate manpower available to accomplish the job?

Is the proposed mechanism adequate to anticipate future needs so that potential problems are resolved before they happen?

What alternatives have been considered, and by whom?

What irreversible environmental changes will be made to the land?

Should land be specifically set aside and preserved intact for future generations?"

In another approach, the League of Woman Voters has developed a checklist of pre-requisites for a successful state land use program. Guide sheet #6 summarizes the considerations the League raised. These include adequate funding, citizen support, administrative co-ordination, adequate data base, local participation, co-ordination of planning and regulation, availability of technical assistance and utilization of existing state authority. Ston the recorder, while you review the Leagues pre-requisites. (Pause)

Did you agree with their priorities? Are there other items you believe should be added to the list? (Pause)

Beginning with Hawaii in 1961, a growing number of states have established programs for planning and managing their land resources. Often, these efforts were catalyzed by a particular, urgent concern--Which captured the attention and involvement of citizens, legislators, and public officials such as, recreation and second home development in Vermont and Colorado; a water shortage in Florida; the despoliation of the coastline in California and Delaware. Several of the state laws created in response to these issues will be discussed in Part II of this unit. Generally, states have found it difficult to build support for their programs without the presence of such an overriding issue, or without a strong commitment from the Governor.

In range and type, land use strategies have been varied, according to each state's particular political, institutional, and geographic features. As an example, Pennsylvania's special situation and needs suggest that a unique approach should be developed to meet its own requirement. While no

single state program provided a "best model", the efforts of other states did offer several useful guidelines to planners in Pennsylvania. On guide sheet #7, there is a summary of the guidelines proposed for Pennsylvania's development of state wide land use strategy. These include the guidelines that the state effort develop a process, not a plan; that land use concerns be divided between state and local governments; that the administrative process be decentralized; that the local planning capabilities be reinforced and strengthened; and finally that the state land use strategy should be comprised of several program elements. Stop the recorder and review the guidelines on guidesheet #7. (Pause)

In this unit we have discussed some principles of land use planning and regulation at the state level. In Part II of the State Implementation unit we will examine a few examples of new state initiatives in this area. Stop the recorder and invert the tape for Part II.

With growing public recognition that the resources of this country and the world are finite, and that environmental conservation and land management are a prime responsibility of government, legislators have begun to provide for comprehensive land resource management needed to avert urban sprawl and environmental devastation. The enormity of problems and the myriad of conflicting interests surrounding a comprehensive approach to land resource management raise difficult political obstacles to a serious examination of state land use regulation. The State and Federal governments have left regulatory power almost exclusively in the hands of local government. As a result, decisions whose effects transcend local boundaries are often based only on local considerations. In addition, many local governments have avoided this delegated responsibility by refusing to enact planning and land management regulations.

One of the most difficult problems facing state legislators when considering alternative methods to manage land use in the magnitude of the task.

But how do you judge the alternatives? Should zoning and planning decision-making powers rest with a level of government higher than the local level? Should the State provide standards to local government or should local government be allowed the controlling voice in development? Would state-level action really be an improvement? The answers to such questions must recognize that the present methods and legislative basis of regulating land use can become a serious handicap in the quest for efficient use of our land resources and the protection of our physical environment.

There is no foolproof method of finding a proper solution. In fact, different solutions are appropriate for different States. The most satisfactory method of resolving difficult legislative issues has always been the educated judgment of individual legislators. A rational and successful updating of land resource management techniques, and the corresponding upgrading of environmental quality, depend upon well-drafted regulations and astute administration. This demands a working knowledge of the objective and procedures as well as an awareness of the opportunities presented by land resource management techniques.

Perhaps no state land use program was conceived out of a more immediate sense of crisis and concern than that of Florida. As the 1970's began, the State was confronted with extraordinary growth pressures:

--Florida has three of the five fastest growing metropolitan regions in the nation--South Florida, Tampa-St. Petersburg, and Orlando;

--the State was attracting 4,300 new residents each week;

--Dade County, alone, experienced a population jump from 500,000 to 1 million residents in just a decade.

In the fall of 1971, a water shortage - - brought on by a severe and lengthy drought in Southeastern Florida - - persuaded Governor Reubin Askew to appoint a task force to study the issues of land and water management. The task force's recommendations led to the passage of the Environmental Land and Water Management Act - - Act 380 - - in the summer of 1972. Turn to guide sheet #8.

Act 380 was patterned on the American Law Institute's Model Land Development Code and the proposed national land use legislation. It required local implementation of State policies, and provided for State intervention in two instances:

--land use decisions in certain vulnerable and fragile areas called "areas of critical State concern;"

--decisions involving major development projects - called "developments of regional impact" (DRI).

Act 380 defines three kinds of "areas of critical State concern":

--areas containing "environmental, natural, or archeological resources of regional or statewide importance";

Second--areas "affected by" or "having a significant effect upon an existing or proposed major public facility or other area of major public investment"; and

Third--"proposed areas of major development potential- - such as a new community."

The Division of Planning in the State Department of Administration makes recommendations for each site proposed as a "critical area." The Administration Commission - - consisting of the Governor and his Cabinet - - must vote within 90 days to either accept or reject the designation.

Once a "critical area" is designated, local governments, following State guidelines, are given six months to prepare acceptable land use regulations for controlling development within the area. If the localities comply, they retain responsibility for administration of the controls.

But, if a local government does not comply - - or if the regulations it develops are found to be inadequate - - the Division of State Planning may prepare its own set of regulations for the area. If the local government fails to adequately enforce the controls, the State may "institute appropriate judicial proceedings."

The critical areas section of Act 380 is considerably weakened by two provisions:

1) There is no provision for interim regulation of critical areas;

2) No more than 5 percent of Florida's total land area may be designated as "critical".

Critical areas may be "critical" because of the threat of imminent development. Knowledge that a particular area is under consideration for special protection - - but that no state enforcement is possible until the area is officially designated - - can have the effect of encouraging developers to act quickly in order to avoid stiffer controls. Since many localities in Florida are without local land use controls, development often can proceed without regulation of any kind.

The 5 percent rule also hinders effective land use management in Florida, placing an arbitrary, and probably inadequate, limit on the designation of critical sites. Interestingly, the Big Cypress Conservation Act of 1973 - - which designated the Big Cypress Swamp as a State critical area - - represented an effort to afford protection to a valuable environmental site without violating the 5 percent ceiling. The Legislature, in passing the Act, exempted Big Cypress from this rule.

Act 380 defines a development of regional impact (DRI) to be "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or

welfare of citizens of more than one county."

Developers, using guidelines and standards prepared by the Division of State Planning, first determine if their proposed project qualifies as a development of regional impact. If it does, they provide information to the local government, the regional planning agency, and the state planning office concerning the effect of their development on;

--environment and natural resources including water quality, air quality, noise levels, sedimentation, erosion, and animal life.

--public facilities such as sewage, solid waste disposal, power supply, schools, transportation ; and

--economy in terms of jobs, taxes, housing.

Local governments - - acting on the basis of information supplied by the developer, and an impact review and recommendation prepared by the regional planning agency - - then decide on the permit request. It can be approved, denied, or approved with conditions.

The effectiveness of the development of regional impact program largely depends on the adequacy of state guidelines, and the quality of enforcement. Critics contend that the guidelines are too loose, allowing developers to ease in under the threshold, or build several smaller projects which individually do not require permits, but which in aggregate have as significant an impact on a region as a single large-scale project. Moreover, state guidelines and regulations can only be enforced where local land use controls are in effect - - otherwise, the developer may proceed without direct regulation.

California has focused its land use planning and management programs on particular geographic areas of the state:

Firstly, San Francisco Bay Conservation and Development Commission.

Secondly, Lake Tahoe Regional Planning Agency

and finally -- on November 7, 1972, the voters of California approved Proposition 20, authorizing the planning and regulation of land use along the State's 1100 mile coastline.

This third piece of legislation - - the California Coastal Zone Conservation Act - - contains some of the strongest provisions for public involvement and environmental protection of any state land use program. It provides for the creation of an independent State commission and six regional commissions, comprised of representatives from both local government and the general public. Moreover, the Coastal Zone Conservation Act assigns the commissions two major responsibilities:

--to plan for the future of the California coastal zone; and

--to regulate, during the planning period, coastal zone development through a permit system.

Permit applications are required for any proposed development which locates within the commission's jurisdiction - - an area extending from three miles at sea to a line 1,000 yards inland from the line of mean high tide - - and applications are made to the regional commissions, who rule, after holding extensive public hearings. Decisions of the regional commissions can be appealed by any aggrieved

party to the State commission for adjudication. There are also explicit provisions for citizen-initiated suits.

In addition to their permit-issuance duties, each regional commission must have prepared and submitted to the State commission by April 1, 1975, a plan for their area of the coastal zone. The State commission, after considering regional recommendations, will submit a plan for the entire coastal zone to the Legislature for "adoption and implementation."

The regulatory responsibilities of the commissions are temporary, and can remain in effect only if the Legislature takes favorable action on the proposed coastal zone plan during the 1976 session. Without passage of new legislation, both the State and regional commissions will go out of existence no later than January 1, 1977.

The smallest state in the union provides another alternative for state coastal land use legislation.

In July, 1971 Rhode Island passed comprehensive coastal zone legislation. A technical committee appointed by the Governor had recommended that a comprehensive plan be developed to guide management decisions. The legislation created a Coastal Zone Council made up of 17 members.

Rhode Island is especially dependent on its coastal resources. The state has a salt water shoreline of 419 miles and a total land area of only 1,057 square miles. Narrangansett Bay and the Providence River indent the state so deeply that no point in the state is more than 25 miles from the shore.

The Council's mandate consists of five major activities:

1. identify all of the state's coastal resources including their quantity, quality and other important characteristics;
2. determine the current and potential uses associated with each resource;
3. likewise determine current and potential problems associated with each resource;
4. devise plans and programs for the management of each resource specifying permitted uses and locations, and protective measures to be followed; and
5. implement such programs through its own activities and the coordination of the state, local, federal and private activities.

The following criteria must be considered in pursuing the above activities.

1. The need and demand for various activities and their impact upon ecological systems.
2. The degree of compatibility of various activities.
3. The capability of coastal resources to support various activities.
4. Water quality standards set by the Department of Health.
5. Consideration of plans, studies, surveys, inventories and so forth prepared by other public and private sources.
6. Consideration of contiguous land uses and transportation facilities consistent with the state guide plan (a long-range general plan for the state).

The Council has jurisdiction over "any development or operation within, above, or beneath

the tidal water, below the mean high water mark." The Council was also given regulatory jurisdiction over a number of activities and areas above mean high water including shoreline protection facilities and physiographic features and intertidal salt marshes.

Specifically, the Council is granted the powers of issuing permits for work in, above or beneath the waters under its jurisdiction, for dredging or filling or other physical alteration of salt marshes; licensing the use of coastal resources which are held in trust for all the citizens of the state; determining the need for and establishing pierhead, bulkhead and harbor lines; investigating complaints alleging violations of state laws or riparian rights in the state's tidal waters.

The uses over which the Council may exert control are:

a. power generation and desalinization plants;

b. chemical or petroleum processing, transfer or storage;

c. mineral extraction;

d. shoreline protection facilities and physiographic features;

e. intertidal salt marshes; and

f. sewage treatment and disposal and solid waste disposal facilities.

As its first major task the Council has undertaken to inventory and prepare regulations for the state's barrier beaches. They have published reports on the management problems involved in regulating barrier beaches and recommendations at the local level for towns where major barrier beaches are located. They have also published management guidelines for sand and gravel extraction in state waters.

Let's change our attention from the East Coast to the West and our only island state.

Historically, Hawaii's land use law is the oldest statewide land use law.

The Hawaiian Land Use Law of 1961 created a Land Use Commission and divided land in the state into four classes of districts: conservation, agricultural, rural and urban. The impetus for the legislation came from plantation owners threatened by urban sprawl.

Initial boundaries of all the districts were adopted in 1964 by the Land Use Commission. The county zoning board determines the uses within urban districts. The use of lands in the rural and agricultural districts is governed by the regulations of the Land Use Commission and the conservation land is subject to the sole regulation of the Department of Land and Natural Resources. Requests for amendments to the district boundaries and for special permits are heard and decided by the Land Use Commission. The Commission is also required by law to review the district boundaries every five years.

The Commission engages in an incremental approach to rezoning approvals. An applicant for a zoning change has to produce a plan for the entire project proposed on the land. But only a small proportion of the land is reclassified initially, enough to get the project started. During this first stage, all improvements such as sewer and water lines are constructed for the whole development.

This procedure is intended to force the developer to carry out the entire development as approved, otherwise he would lose his high investment in the improvements. (Pause)

After ten years of administration of the law, one can infer the policies that are guiding the control process: (1) prime agricultural land should stay in that use; (2) tourist-oriented development should be encouraged without distrubing the natural landscape; (3) urban areas should be developed compactly and attractively to provide reasonable cost liveing arrangements.

Back on the East Coast, the decade of the 1960's bore witness to a drastic expansion in the development of recreational facilities (principally ski resorts) and second-home subdivisions in the state of Vermont. In 1969, due to the growing public concern over the impact of this expansion of the state's environmental resources and unique natural beauty, the governor appointed a special-study commission on environmental control. The Commission found that despite the existence of enabling legislation, large areas of the state had no planning, zoning, or subdivision control mechanisms; most towns when faced with development pressures, were unable to deal with them in a systematic and rational manner. Consequently the Commission, in its final report, which was published in January, 1970, recommended "the preparation of a comprehensive land-use plan for the state of Vermont to be undertaken as soon as practical ... "[1] In addition, it recommended that the "plan and its subsequent administration should be the responsibility of an effective administrative unit clearly charged with the responsibility of protecting the environment."[2] These recommendations served as the basis for the state's land-use and development law,[3] which was enacted in the spring of 1970 by the Vermont Legislature.

The fundamental provisions of the law are summarized in its declaration of intent wherein it is provided that the "state shall, in the interest of the public health, safety, and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development, and land-use plans..."[4]

The Environmental Board was created as an independent regulatory body with statewide jurisdiction. It is housed, for purposes of budget and staffing, in the Agency of Environmental Conservation, "a newly-created umbrella agency for all Vermont departments dealing with natural resources." The law provided for the division of the Geographic area into nine districts and created a District Environmental Commission for each one.

Together, the Environmental Board and district commissions were vested with the duty of regulating the following board range of land-use throughout the state: housing or trailer-park developments of 10 or more units; commerical or industrial imporvements on more than 10 acres (on more than one acre in towns without permanent zoning and subdivision controls); any tract or tracts of land which have been partitioned into 10 or more lots, under 10 acres in size, for the purpose of resale; state or municipal construction on land involving more than 10 acres, all development--commercial, industrial, or residential--above the elevation of 2,500 feet. Regulation is implemented through the issuance

(with or without conditions), or the denial of development or subdivision permits. Turn to Guidesheet #8, Part B. As the basis for granting such permits the law required that the board or district commissions determine that the proposed development or subdivision:

"1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the applicable health and water resources department regulations.

"2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

"3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

"4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

"5) Will not cause unreasonable highway congestion or unsafe conditions with respect to use of existing or proposed highways.

"6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

"7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

"8) Will not have an undue adverse effect on the scenic or natural beauty of the area, esthetics, historic sites, or rare and irreplaceable natural areas.

"9) Is in conformance with a duly-adopted, land-use plan, or land-capability plan.

"10) Is in conformance with any duly-adopted local or regional plan..."

The process of obtaining a development or subdivision permit is initiated through an application by a developer to the district commission having jurisdiction over the area in which the development or subdivision is proposed. Two copies of the application are forwarded to the Environmental Board which, in turn, sends one to the Agency Review Committee, a body consisting of representatives from the several departments within the Agency of Environmental Conservation. This committee provides the district commission, in the form of a single document (the agency position paper), with technical comments and information to be used in evaluating the permit application in terms of the above described statutory criteria.[11] In addition, following receipt of the agency position paper, the district commission considers information and comments of interested parties submitted at a public hearing held in connection with the permit application.

Any interested party who is aggrieved by a decision of the district commission may appeal to the Environmental Board. In such cases, the law requires the board to hold a new hearing and to make its

own determination of whether to grant or deny the permit on the basis of the same statutory criteria which govern the district commission's evaluation. The decision of the board may be appealed to the Vermont Supreme Court.

The land-use planning process which the law set in motion was designed to proceed in three stages over a period of three years. In the first stage the Environmental Board was required to adopt an Interim Land Capability and Development Plan, the purpose of which was to "describe the present use of the land and to define in broad categories the capability of the land for development and use based on ecological considerations." Next, the board was required to adopt a Capability and Development Plan, which, based on the information in the Interim Capability Plan, was to provide guidelines for "accomplishing a coordinated, efficient, and economic development of the state ...in accordance with its "present and future needs and resources." In the final stage, the law required the board to adopt a Land-Use Plan based on the Capability and Development Plan, consisting of "a map and statements of present and prospective land uses...which determine in broad categories the proper use of the lands in the state whether for forestry, recreation, agriculture, or urban purposes."

The law provided for the Interim Capability Plan and Land-Use Plan to serve successively as one of the 10 criteria upon which the district commissions or the Environmental Board determine whether to grant or deny development or subdivision permits. However, before they can be utilized in the regulatory process, each of the plans is required to be approved by the governor. Furthermore, in the case of the Capability and Development Plan and the Land-Use Plan, approval by the Legislature is required.

Because these plans were to serve as binding criteria for the district commissions' regulatory decisions, the law provided for changing the interim capability standards and land-use district boundaries through petition by an interested party to the Environmental Board.[21] As is the case with permit applications, decisions of the board with respect to petitions for changes may be appealed to the Vermont Supreme Court.

IMPLEMENTATION

Of the two processes which the Vermont land-use and development law set in motion—land-use regulation and land-use planning—the former has, to date, procuced the most tangible and positive results. With respect to the latter, an Interim Capability Plan and a Capability and Development Plan were approved and adopted as required by the law. However, the final stage of this process, the legislative adoption of a state land-use plan, is far behind schedule. This is due principally to the fact that the traditionally volatile issue of state versus local control of land use has not been resolved by the public agencies and officials who are charged with the responsibilities of preparing, approving, and adopting the plan.[22]

A. Regulation: From the effective date of the land-use development law through March 1, 1974, the state's district environmental commissions had acted upon 1,446 permit applications. Only 43 of

these applications were denied.

The fact that the great majority of permit applications has been granted by the district commissions is not an indication that the regulatory system is not working. On the contrary, it is generally believed that through the imposition of conditions on developments and subdivisions in connection with the issuance of permits, the district commissions have played an important role in improving the quality of development throughout the state.[25]

The State of Connecticut has taken steps in response to the need for land use programs through the establishment of closely related, technical programs for land use planning and water resource planning. The statewide land use effort, which emanates from the Planning Section of the Department of Finance and Control, was built upon a foundation of extensive municipal and regional work in land use planning. Due to the interrelatedness of land use and water resources, the work of these two programs were combined. The product of the unified effort was the Proposed Plan of Conservation and Development for Connecticut, issued January 1973. The following description is excerpted from the published document.

The Plan of Conservation and Development is a set of written and mapped policies and recommendations that relate to the conservation and development of Connecticut's land and water resources. Of major importance is the fact that it identifies a larger role for State government in decisions relating to the use of Connecticut land and water resources. As now structured, the decision-making process places the basic decision of appropriate land use in the jurisdiction of the planning and zoning commissions and boards of appeals of local governments, even though most basic public services and facilities are assisted either directly or indirectly by state and federal governments. These local and state programs are all too often seriously limited in their effectiveness by the lack of close coordination and agreement on overall objectives.

To properly represent the interests of the entire state in the social, economic and environmental effects of cumulative land and water use decisions, the Plan sets forth a policy that State government take a leadership role in establishing a land and water use decision-making process which will adequately assure the participation of all affected parties. Thus, the Plan of Conservation and Development calls for a partnership of state and local government and other affected interests in land use and water planning and implementation.

This partnership must be based upon a general frameworkof statewide land and water resource policy. Within this general framework, local and regional planning agencies would set forth the specifics of desirable land use form and the ultimate level and appropriate staging of future development. The varied programs and investments of state government would then be applied in a coordinated manner, working with local programs and private investment, toward the implementation of the Plan.

The Plan of Conservation and Development contains maps which depict either land and water

recommendations of a geographic nature or general information related to conservation and development. The Land Use Policy map* divides Connecticut into three land use categories designed to guide the use of land.

They are areas Suitable for Urban Development, areas for Permanent Open Space, and areas for Limited Development.

Approximately one-quarter of the state is considered Suitable for Urban Development. These lands are considered suitable because they now have--or are expected to have-- public water, sewers and access to major transportation arteries, and are on generally good land. They are also part of or close to existing urban centers. The category Suitable for Urban Development also avoids major water supply watersheds and other areas recommended as permanent open space.

The Plan of Conservation and Development identifies another one-fourth of the state as appropriate for Permanent Open Space. Contained within this category are existing open space and recreation areas (public parks and forests, private natural preserves and utility lands), major coastal and inland wetlands, major sites identified by State government and regional planning agencies for recreation, existing and potential water supply reservoir sites and ground water supplies, ridges, mountains and major floodplains.

The remainder of Connecticut has been categorized as Limited Development. Included are major agricultural lands, lands which are poorly suited for urban development, and lands which make up the watersheds, excluding water supply reservoir sites.

The Water Use Policy map* graphically depicts policies related to water resource use. Shown are the proposed uses of key streams, water bodies and watersheds in the state, as well as the identification of high priority aquifers. The proposed water uses are divided into two major categories: Water Supply, and Water Based Recreation.

It may be evident from this brief description excerpted from the Plan of Conservation and Development that there are many weaknesses in this approach. The report identifies the need of a larger state role but proposses no mechanism. Since this is a document adopted by executive order of the governor and not the legislature, there is no effective implementation mechanism nor any regulations or sanctions to enforce the plan. However, the Plan does raise interesting questions that may someday serve as the basis for a state land use policy.

As is evident from our rapid survey, land uses laws vary among the states. Each state that has developed land use controls has created its own unique combination of regulations, incentives and sanctions. The problem of developing a land use law is a complex and difficult one as is illustrated by the rhetorical questions for legislators on guide sheet #5. One approach to identifying workable solutions for your town is to survey your community. One state, Pennsylvania, used this approach early in their planning process. Turn to the copy of their survey on Guide sheet #9. What are the key

areas checked in this survey? Part I identifies the priority problem areas. In Part II, citizens are asked their preference for a method of regulating land use. On the next page, Part IV asks which agency of government should be responsible for developing and enforcing land use regulations. Part VI of the survey is designed to identify the basic reasons for opposition to land use regulation. Finally, the purpose of Part VII is to identify the most effective method of public participation in land use decisions? The survey reminds us of many of the essential parts of the decision making process that were discussed at the end of Part I of this unit. Answer the questions in the survey on guide sheet #9 yourself. Where are your priorities? Stop the recorder while you work. (Pause)

As you review the survey, has it helped you identify priorities for issues, methods, and stategies in developing your own state plan? (Pause)

Guide sheet #10 contains a table summarizing state land use laws in all 50 states in September, 1974. Can you identify the land use laws in your state? Have there been any new laws since the table was prepared? Is there a need for new land use legislation or regulation in your state? In your opinion, What are they? Inform your legislator of your opinion.

Also, write your state department of environmental protection or environmental conservation for details of the land use laws in your state. For Connecticut residents, there are two issues of the DEP Citizens Bulletin that describe many of the laws that effect land use within the state included in the Kit. Are you aware of the laws that affect your town or area? (Pause) After you are finished with your study of state land use laws, join us in the FEDERAL IMPLEMENTATION Unit for a discussion of federal laws which affect land use in your community.

Land use planning of some type is a part of numerous existing federal programs. Approximately 137 programs have a direct impact on land use; only the most extensive, and most widely known, will be discussed in this unit.

Before delving into details of program, it is useful to review the breadth of Federal programs involved in water and land use planning. Turn to page 2 of the orange covered booklet entitled A Citizens Guide to Information on Land Use Decision Making.

This table was prepared by a private firm, Meta Systems, in a report for the Department of The Interior entitled, "An Operational Framework for Coastal Zone Management"

Note the key at the bottom of page 2. A zero (o) indicates a direct role for the agency. A star (*) indicates an indirect role such as advice and counseling for the agency. A plus (+) denotes that the agency role is in providing financial assistance.

For someone studying the table on pages 2, 3, and 4 for the first time, the large lists of federal agencies that have a role in water and land use planning are usually overwhelming, these include 7 cabinet level departments as well as at least eight executive agencies. To illustrate the problems of accumulating information on all programs in this area it is useful to notice the programs omitted from the list. This list is missing several major programs including HUD 701 program, National Flood Insurance Program and the EPA Air Quality program.

Review the list of agencies on pages 2, 3, and 4 in the Citizen's Guide, paying special attention to the role each agency plays. Turn the tape recorder off while you study the list. (Pause)

We will begin our review of federal programs that influence land use with one of the oldest such programs, the Comprehensive Planning Assistance Program, better known as the HUD 701 program.

The HUD 701 program, specifically the Comprehensive Planning Assistance Program of the Housing Act of 1954, was originally designed to provide grants to state planning agencies "to facilitate urban planning for smaller communities lacking adequate planning resources." After a series of amendments, the Act now provides grants to "localities of all sizes, counties, metropolitan, and regional planning agencies, councils of governments, states, specialized agencies such as transportation-planning organizations, interstate agencies, and Indian tribes."

Although there have been several recent amendments to the HUD 701 program, the most appropriate for discussion concerns Section 600.72 of the regulations promulgated pursuant to the legislation, "Required land use element." This requirement states that no applicant will receive a grant through or after August 22, 1977 unless they have developed a land use plan as set forth in Section 600.72. These are outlined on Guide sheet #11. Stop the recorder while you review the HUD 701 land use element. (Pause)

The land use amendment comprehensively outlines what states and areawide planning organizations shall include concerning growth; where it should and should not take place; the type, intensity and timing of growth; as well as effective measures for guiding and controlling decisions concerning growth. The program shall include a description of all present land use programs, their status,

and their relationship to all other land use related programs, (proposed and current).

Another piece of federal legislation, one administered by the Dept. of Commerce, which has a direct effect on land use is the Coastal Zone Management Act of 1972. Although its coverage is limited to the 30 coastal and Great Lakes states, it provides a prototype state land use control power which would be required of all states if similar but more general national legislation were passed.

Refer to Guide sheet #11 part B as we continue our discussion. The Coastal Zone Management Act was established for the purpose of providing funds to coastal states to encourage these states to prepare and implement management programs. The act, in dealing with land use within the coastal zone, specifies that the states will:

identify boundaries of the coastal zone;

define permissible land uses;

inventory-designate "areas of particular concern";

develop criteria to control land uses; and

develop priority of uses.

The coastal zone includes "those lands and only those lands where any existing, projected, or potential use will have a 'direct and significant impact on the coastal waters.' "Section 304 states that the zone refers to waters and adjacent shorelands "strongly influenced" by each other. The states have a 3 year period to develop a program. After program approval by the CZM office, the states are then eligible for grants to assist in administering and maintaining their program.

For further information, on the Coastal Zone Management Program refer to Part II of the Coastal Wetlands Unit in this kit.

On February 19, 1975, an agreement was signed by the Department of Housing and Urban Development Comprehensive Planning Program (701) and the Department of Commerce Coastal Zone Management programs. The purpose of the agreement is to help make state planning amd management less costly and more effective for coastal areas.

No single law has had as great an impact on environmental decisionmaking in the United States as the National Environmental Policy Act of 1969. NEPA as the act is called accomplished several things. First, it declared a broad national policy for environmental protection. Second, it created certain "action-forcing" procedures to insure that the policy is carried out. Third, it established a Council on Environmental Quality in the Executive Office of the President.

Of the action-forcing provisions in NEPA, the most innovative and far-reaching is a requirement, in Section 102 (2) (C), that Federal agencies prepare an environmental statement in advance of "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." These statements must include certain specified elements, including a discussion of alternatives to the proposed action, and they must be circulated for comment to other Federal agencies, affected State and local governments, and the public.

The primary purpose of this process is to force full disclosure of the environmental consequences of a proposed action, thus alerting agencies, the public, and ultimately the President and the Congress to the environmental risks involved. An important and intended result is to build into the decision-making processes of Federal agencies a continuing consideration of environmental factors.

Although NEPA applies only to Federal actions and not directly to actions of State or local governments, State and local agencies are involved significantly in the Federal environmental impact statement process. Approval of Federal funding for many State and local projects (a highway, for example) may require an impact statement under NEPA. Also, State and local authorities are asked to comment on Federal impact statements on projects affecting their areas. Turn to Guide sheet #12. (Pause)

What is an EIS or environmental impact statement?

An environmental impact statement is the heart of a Federal administrative process designed to ensure achievement of national environmental goals. It is both a planning tool and a mechanism for achieving public disclosure. Each statement must assess in detail the potential environmental impacts of a proposed action.

As early in the decision making process as possible, and in all cases prior to agency decision, an agency prepares a "draft" statement for review by appropriate Federal, State, and local environmental agencies as well as the public. After comment from the agencies and interested parties, the statement is prepared in final form, incorporating all comments and objectives received on the draft and indicating how significant issues raised during commenting process have been resolved. Both draft and final statements are filed with the Council on Environmental Quality (CEQ) and made available to the public.

The statement"s primary purpose is to disclose the environmental consequences of a proposed action, thus alerting the agency decision maker, the public and ultimately Congress and the President to the environmental risks involved. An important and intended consequence of this is to build into a Federal agency's decision making process a continuing consciousness of environmental considerations. This, in turn, ensures to the fullest extent possible that the agency directs its policies, plans and programs so as to meet the national environmental goals laid down in the act.

The National Environmental Policy Act requires five specific points of information to be covered in a Federal environmental impact statement. They are listed on Guide Sheet # 12.

The environmental impact statement:

Must state the environmental impact of the proposed action,

Must define any adverse environmental effects which cannot be avoided should the proposal be implemented,

Must outline alternatives to the proposed action,

Must descuss the relationshop between local shortterm uses of man's environment and the maintenance and enhancement of long-term productivity, and

Must define any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Stop the recorder while you study the content requirements of an environmental impact statement on Guide sheet #12. (Pause)

Environmental quality is composed of three interdependent parts-air quality, water quality, and land quality. The realization is evident in the fact that we live at the land/air/water interface. What constitutes a land use also constitutes an air use. Our dependence on water, and the fact that most of the population in this country is located on the coasts or along major waterways, illustrates the close relationship between land use and water use,for example, see the list on guide sheet #13 that correlates land practice or use with resulting environmental problems. Stop the recorder to study the Guide sheet. (Pause) Any attempt to protect environmental quality, therefore,must consist of equal consideration of land, water, and air uses.

The Environmental Protection Agency (EPA) has recognized that many of its programs designed to achieve specific environmental qqality objectives are closely related to land use planning and decision-making. Patterns of land use significantly affect the nature, amount, and concentration of air and water pollutants, noise emmissions, solid waste, and other environmentally harmful by-products generated by our society. Conversely, environmental protection requirements significantly affect the location and timing of development and other land use decisions which shape land use patterns.

Guide sheet #13 table B illustrates the relationship between environmental protection and land use by specifically relating problems of pollution abatement with their source. For instance sedimentation, a form of water pollution, can be traced to erosion related to a land use. The erosion may involve construction, agriculture, clear cutting, or stream channelization. In order to correct this type of pollution problem, some regulation of land use practices are needed.

Similar arguments can be made for many other forms of air, water, solid waste and noise pollution. In response to this type of argument, Congress has passed a series of environmental laws delegating authority to the Environmental Protection Agency in order that the trend of environmental detioration be reversed.

Thus, EPA's regulations, particularly those promulgated under the Clean Air Act and the Water Act, most definitely paint EPA into the large picture of land use planning. It is important to emphasize, however, that the Air and Water Acts are not land use laws, and it is EPA's responsibility to move prudently in this controversial area.

The Clean Air Act contains only one explicit reference to land use. The statute requires state implementation plans to include land use and transportation controls "where necessary" to achieve and maintain air quality standards. In addition, the Act also requires states to grant authority to some statewide regional or laocal agency to prevent construction or modification of any new source which will interfere with attainment or maintenance of air quality standards. To the extent that this provision authorizes state review of the location of stationary pollution sources, it sanctions land use regulation. Implementation of these provisions will impact land use.

Transportation control measures are required for any air quality control region where controls on stationary sources, coupled with the federal standards for auto emmissions, are inadequate to ensure attainment of the ambient standards.

Transportation control plans have now been established for approximately 30 metropolitan regions around the country. The strategies adopted in various cities include a wide variety of approaches, such as inspection and maintenance systems, air-bleed retrofit of pre-1968 vehicles, mass transit and traffic flow improvements, exclusive bus/carpool lanes, street parking restrictions, management of parking supply, employers' mass transit incentives, and establishment of bikeway networks. These control strategies will undoubtedly have a long-range impact on land use planning in many urban areas.

Indirect Sources

EPA recently promulgated final regulations requiring pre-construction review of indirect sources of air pollution. Under the regulations, states must include in their implementation plans, provisions for reviewing prior to construction or modification of, air quality impact of major urban roadways, parking lots and garages, shopping centers, recreational centers and amusement parks, sports stadiums, airports, commercial and industrial facilities, and apartment and condominium buildings. Developers will be required to obtain favorable air quality impact reviews before they can begin work on indirect sources to be constructed or modified after January 1, 1975.

Although EPA interim administration will be necessary in the many states that do not yet have approvable programs, state and local governments should assume administration of the indirect source review regulations as soon as possible. Thus far, Alabama, Florida, and Guam have developed acceptable programs. The indirect source regulations also require states to identify areas where projected growth and developemt could result in violation of the national standards during the next ten years. These areas must be carefully analyzed, and plans for dealing with the problem areas must be submitted to EPA.

Under section 111 of the Clean Air Act, EPA is required to publish a list of categories of stationary sources which may contribute significantly to air pollution, causing or contributing to the endangerment of public health or welfare. After listing a category, the Administrator must then establish federal performance standards for new sources within that category.

The land use provision relating to these new sources appears in section 110. That section requires state implementation plans to provide for mandatory pre-construction review of the location of new stationary pollution sources and for authority to prevent construction "at any location which... will prevent the attainment or maintenance ... of a national ambient air quality ... standard." Thus, states can use this review process to implement land use decisions about the location of new stationary sources of pollution for which performance standards have been promulgated, so long as those decisions are related to the state's pollution control strategy.

In discussing the Clean Air Act, we would be remiss if we did not allude to the Supreme Court's four to four deadlock vote in the Sierra Club non-degradation case. The tie vote had the effect of ratifying the action of the D.C. District Court which ordered EPA to issue regulations requiring the state

to take steps to prevent what the court cryptically referred to as "significant deterioration" in those parts of the country where the air is now cleaner than is required by the quite tough secondary standards. Because judgments as to significant deterioration require a balancing of air quality, economic, and social values for specific geographical areas, and because the regulations will have major land use ramifications, these regulations will express the EPA's view that these judgments should be made by the states, not EPA. EPA wil try to prevent significant deterioration" without putting a socially and economically unacceptable constraint on reasonable and legitimate future growth and dispersion of industry. It is clear, however, whether implementation of non-degradation is achieved by the states, or in the event of default, by EPA, that the non-degradation regulations, like the transportation controls, indirect source regulations, and preconstruction review of stationary sources will bear markedly on the land use issue.

In a similar manner to The Clean Air Act,The Federal Water Pollution Control Act of 1972, was established to "restore" and "maintain" the water of the U.S. . Mechanisms used to meet standards are the permit program and the planning processes. Both the permits and planning require consideration of land use in the decision making process. Because of limited tape time, the key sections of the law are outlined on guide sheet #14. Stop the recorder while you familiarize yourself with the land use related features of this law. (Pause.)

While it is not within the EPA's specific authority, problems of the destruction of ecological stability and loss of aesthetic values are also directly related to land use issues as guide sheet #15, Table A illustrates. The [illegible] on Guide Sheet #15 must all be considered if our society is to take a holistic approach to environmental protection. Hence, the strong interest of the Environmental Protection Agency in land use.

The EPA has recently established an office of land use. The purpose of this office is to co-ordinate the many EPA programs affecting land use, and conduct a research and developement program in land use planning. Ths specific authorities of the EPA in regulating land use are summarized on guide sheet #15, Table B. Stop the recorder while you review the table. (Pause).

In this modern era of "consumer education" and full disclosure, there is still a natural apathy toward everyday events that often result in raids on the public funds we all must share. The continued, uncontrolle development in the nation's flood plains is an activity that results in subsequent costs to taxpayers in the form of disaster assistance. One event alone (hurricane Agnes, June 1972) has been estimated to cost the federal taxpayers $3.2 billion for temporary care and long-term rehabilitations.

These costs are really the rental fee that Nature demands for man's use of her flood plains. Yet man, with his infinite wisdom, makes daily decisions to occupy flood plains with no concern for the cost which is being deferred to the next tragedy. At the present time, the estimated annual losses due to flooding is over $1 billion. With no future land use control, this estimate is expected to be over $3 billion annually by the year 2000.

Refer to guide sheet #16 as we discuss the National Flood Diaster Prevention Act.

Floodplain regulation is for the most part a local option. The Federal Flood Disaster Prevention Act of 1973 established minimum regulatory requirements for flood-prone areas, and the states have moved to assist in their implementation, but effective control cannot be accomplished without local initiative.

The Flood Disaster Prevention Act of 1973 attempts to discourage further floodplain development by making land use regulation a precondition to issuance of subsidized insurance policies. Pursuant to the Act, the Secretary of Housing and Urban Development is in the process of identifying flood-prone communities. These communities must enter the National Flood Insurance Program by July 1, 1975, or within one year after notification, whichever is later, or applications for Federal financial assistance and Federally-related assistance (e.g. loans and mortgages) within the floodplain will be denied, even if the community is not participating in the flood insurance program.

While the Act provides for the accelerated identification of flood-risk zones, most communities will be required only to review building permits for adequate flood-proofing. Where adequate technical data is available, communities may also be required to ban non-flood-proofed construction below the level of the 100 year flood or to control construction or alteration within a floodway so that the water surface of the 100 year flood will not be raised more than one foot at any point.

The National Flood Insurance Program has been strongly criticized.(1) "It encourages continuation of existing development that might otherwise relocate by providing premium subsidies up to 99 percent; (2) it depends upon disjointed local regulations that have been riddled with large constitutional loopholes permitting floodplain development; (3) it has stretched under development pressure to allow subsidy for new construction; (4) and since developers who build before the HUD Secretary certifies the local flood insurance program are virtually assured of subsidized insurance, it actually operates to encourage rapid new floodplain settlement."

The national standards of the program are considered to be a compromise between the rights of property owners and the public's right to prevent individuals from becoming burdens to their fellow men and society in general.

The underuse of flood plain lands has an economic cost, just as overuse has the economic cost of excessive flood damage. This situation can more easily be predicted since future floods, barring human interference, will follow basic patterns; those who locate on known flood-prone lands are destined to suffer the consequences. Where the enforcement of flood-plain regulations may alter the existing, traditional construction practices and possibly increase overall costs, care was required in the selection of a standard that would project a uniform risk and thereby not be discriminatory to a region or community.

Stop the recorder while you review the summary of the Flood Disaster Prevention Act. (Pause)

The Soil Conservation Service, under the supervision of the Department of Agriculture, was established to conserve and develop soil and water resources.

Through soil and water conservation districts, the Department of Agriculture is aiding landowners with all kinds of land use difficulties. Because of their many years in dealing closely in the land use field, USDA has many resources including soil survey data, conservation methods, engineering and watershed planning, technical assistance in agronomy, biology, forestry, and range conservation, and assistance on scientific phases of land inventory and monitoring. The Department of Agriculture policy, as stated by J. Phil Campbell, Under Secretary of Agriculture is to:

1. Adapt present programs to help enhance and preserve prime agricultural, range, and forest lands:

2. Promote and help influence the management of rural lands to assure adequate sources of high-quality water;

3. Intensify conservation work on lands returned to cultivation in the current push for higher production;

4. Cooperate fully with other Departments in terms of responsibility for policy and leadership; and finally.

5. Get timely information and assistance to decision-makers everywhere.

Federal and State efforts to preserve and promote amenities are for the most part limited to the acquisition and maintenance of park and recreational areas. The only significant Federal-State program dealing directly with the promotion of natural beauty is the Highway Beautification Act of 1965.

The Federal Act provides that an amount equivalent to 3 percent of the funds apportioned to a State for Federal aid highways may be used for landscape and roadside development within a right-of-way, and for the acquisition and scenic improvement of land adjacent to the highway. It also provides for control of billboards and junk yards (including dumps) adjacent to interstate and primary highways, by authorizing funds to be used to compensate owners of billboards within 660 feet of the right-of-way and to owners of junk yards for screening and removal within 1,000 feet of the right-of-way, except in areas zoned or used for commercial activities.

Local regulation of signing and similar intrusions on natural beauty has a longer history than the Federal and State programs. Ordinances may prohibit off-premise advertising, limit the total area of signs, limit the height of ground signs or pole signs, or control a sign's illumination. The rationale for these controls varies. Acceptance by the courts is most likely when the regulations are defended on the basis of aesthetics, plus some other police power purpose, such as the preservation of property, health, or public safety.

Aesthetic considerations can also be combined with economic considerations where natural beauty and scenery are used to attract tourists. "As the courts are disposed to uphold aesthetic controls in historic areas because of the adverse effect of incompatible development on tourism, they are similarly inclined to uphold regulations preserving natural beauty."

Federal and State laws for preservation of historic landmarks consist of provisions enabling identification and acquisition.

Typically, State enabling acts authorize the designation of historic districts and individual landmarks, describe in general terms the criteria applicable to both, and establish the procedures for designation and subsequent building permit review.

Even in the absence of such legislation, however, municipalities can use zoning and other powers to preserve or at least postpone the demolition of historic landmarks.

Insofar as preservation of landmarks is a part of a states police power, that power is often delegated to local political subdivisions.

As with other critical environmental areas, the struggle to preserve historic sites and buildings often pits popular notions of progress and profits against intangible values that are far more difficult to measure. Historic areas do have measurable benefits, however. They can:

. function as recreation areas;

. attract tourist and other business;

. serve as important educational resources;

. contribute to a range of scientific endeavors; and

. be rehabilitated to meet a variety of new uses.

But their full value is incalculably greater than the sum of all of these; indeed, an appreciation of the past is one measure of how far any society has advanced.

National Programs

A number of Federal programs provide important support to state and local preservation efforts. These are outlined on guidesheet #17. If you have the opportunity to work on the preservation of a historic landmark the list will be useful. (Pause)

This has been a rapid survey of the complex and varied involvement of The Federal Government in land use planning. As yet, there is no Federal land use planning legislation, but there have been several efforts to date.

Commentators have noted a National trend towards more environmentally sensitive land use legislation and court decisions in the 1970's. This trend is occurring in many areas of law:- those which directly effect land development, those dealing with pollution control regulations which have land use consequences, and those which seek to promote amenity in land use.

The reasons for this trend lie in a gradual increase in the weight given by society and courts to the environmental purposes behind land use legislation. Society and the courts increasingly appear to be factoring environmental values into the complex process of arriving at what they regard as a landowner's justifiable expectation of dollar return for the use or sale of his land.

Comprehensive land use planning is the linchpin of any successful environmental program, and all levels of government shoulder an enormous responsibility to plan prudently for our country's

development. In fact, there are very few social, economic, or environmental issues before this country that are not somehow deeply and directly bound up with questions of land use--with questions of how and where we organize our activities in space. And we cannot hope to really come to grips with these other issues--of housing, of transportation, of air and water pollution, of equality of opportunity as well as quality of life--until we begin to devise effective and democratic ways of dealing with our patterns of growth and development.